Calendar No. 130

101ST CONGRESS *1st Session* | SENATE | REPORT 101-55

IMMIGRATION ACT OF 1989

JUNE 19 (legislative day, JANUARY 3), 1989.—Ordered to be printed

Mr. BIDEN, from the Committee on the Judiciary, submitted the following

REPORT

together with

ADDITIONAL AND MINORITY VIEWS

[To accompany S. 358]

The Committee on the Judiciary, to which was referred the bill (S. 358) to amend the Immigration and Nationality Act to change the level, and preference system for admission, of immigrants to the United States and the naturalization process, favorably reports the bill in the nature of a substitute and recommends that the bill as amended do pass.

CONTENTS

	Page
I. Purpose	2
1. Immigrant Visa Reform	2
2. Administrative Naturalization	3
II. Summary of Bill's Provisions	4
1. General Provisions	4
2. Reform of Family Preferences	4
3. Independent Immigrants	4
4. Administrative Naturalization	5
III. Basis for Committee Bill	6
1. Establishing a National Level of Immigration	6
2. Expediting Reunion of Close Family	7
3. Promoting More Equal Access to Immigration System	10
4. Ensuring Continued Employment Related Visas	10
IV. Immigration Policy and the National Interest	10
V. History of Current Legislation	11
VI. Section-by-Section Analysis	13
VII. Committee Intent	18

29-010

S523-5

Page
VIII. Committee Action 22
IX. CBO Cost Estimate 23
X. Regulatory Impact Statement 26
XI. Changes in Existing Law 27
XII. Additional Views of Mr. Simpson 79
XIII. Minority Views of Messrs. Hatch and DeConcini 82

I. PURPOSE

1. IMMIGRANT VISA REFORM

The purpose of the committee bill is to reform our current system for admitting immigrants so that it more faithfully serves the national interest, by increasing flexibility and by creating the opportunity to immigrate for persons from nations which are shortchanged by current law. The provisions of this bill will accomplish these objectives while maintaining the priority we have traditionally given to those with family connections in the United States, and without departing from the principles of equity and fairness established in the 1965 act reforms.

The committee bill will create two separate immigrant-visa "preference systems": one for close family members, another for "independent" immigrants. This two-track system was suggested by the Select Commission on Immigration and Refugee Policy, and it was part of both S. 358 and S. 448. At least 55,000 visas will be added to the independent category, and they will be available to users of the present immigration system and to earlier sources of immigration to the United States. Because the lion's share of the visas would still be reserved for the family members of recent immigrants, and because visas will be available to persons from every country in the world, the intent of the 1965 reforms is followed.

By redressing some of the imbalances in immigration which have inadvertantly developed in recent years, we will open our doors again to those who no longer have family connections in the United States. By placing more emphasis on the particular skills and qualities that immigrants possess, the bill will bring our present immigration policy more in line with the national interest. The committee estimates, for example, that many countries which send only a few hundred immigrants per year to the United States may eventually receive a much fairer share of our available immigrant visas. The overall benefit of immigration to our country will increase, because a larger proportion of immigrants will be subject to labor market and skills tests.

As outlined below, the committee bill follows the 1981 recommendations of the Select Commission on Immigration and Refugee Policy, which laid the basis for the 1986 Immigration Reform and Contol Act. That bill dealt primarily with the control of illegal immigration. It did not, however, address the other half of the Select Commission's recommendations for needed reforms of our legal immigration system.

The key features of the committee bill are the following:

First, it establihshes a national level of immigration within which all new permanent entrants would be counted, except refugees and asylees, who would continue to be admitted under the provisions of the Refugee Act of 1980. The level is set at 600,000 for the first 3 years (106,000 higher than the 1988 level)

to allow for the new point system, increased preference, visas, and growth in the category of immediate relatives of U.S. citizens). Within that level, the bill distributes the additional family connection visas to give greater priority to the closest family members.

Second, the bill creates a new category for "independent immigrants." Visas would be available for those with skills that are in short supply in the United States, and for those from nations who hae been unable to use the current system because they have no family connections in this country. This is accomplished by retaining the current preferences for persons of exceptional ability and skilled workers, and by adding at least 54,000 visas. The bill allocates the additional 54,000 numbers in the independent category according to a "point system," similar to systems currently used in Australia and Canada.

Third, the bill assures a regular review of the immigration system will be undertaken by requiring the administration to report every year on the basic social and economic effects of immigration on our country, by requiring the administration as well as an independent congressional commission, to consider, and, if appropriate, to recommend changes in the national level of immigration every 3 years, and by allowing Congress to accept or reject such proposed modifications under expedited parliamentary procedures.

The committee believes the time has come for Congress to take up where it left off in 1986 and address the unfinished agenda of immigration—the reform of our legal immigration system.

The committee bill is a balanced attempt to serve the national interest; it preserves the immigration opportunities for those who have close family connections in this country; it stimulates immigration from the earlier sources of immigration to our country that have contributed so much to America in the past; and it promotes the entry of those who are selected specifically for their ability to contribute their needed skills and talents to the development of our country. This reform will both continue and strengthen one of the oldest and most enduring themes in our Nation's history—America's immigrant heritage.

2. ADMINISTRATIVE NATURALIZATION

In addition to much-needed immigrant visa reform, the bill also addresses growing backlogs in the naturalization area. Under current law, naturalization is awarded only in judicial proceedings. While most judges take seriously the responsibility to naturalize qualified applicants in a timely manner, certain courts have allowed acute backlogs of up to 2 years to accumulate.

The committee bill permits naturalization to be conducted under an administrative, rather than judicial, process as a way of relieving courts of the naturalization burden. The committee bill makes no changes to the naturalization requirements.

Furthermore, in a provision proposed in the last Congress by Senator Daniel K. Inouye of Hawaii, the committee bill corrects a

long-standing omission by naturalizing certain Filipino veterans of World War II who fought in the U.S. Armed Forces.

II. Summary of Bill's Provisions

1. GENERAL PROVISIONS

Establishes a national level of immigration for all immigration categories. The level for the first 3 years will be 600,000, which reflects current flow, plus an additional 110,000 numbers.

Under this overall level, 480,000 numbers would be reserved for the first 3 years for family immigration, and 120,000 would be for the new "independent" category.

Admission of refugees remains governed by the Refugee Act of 1980 which requires annual consultations and limits.

Separates the family preferences system from a new "independent" category and creates a point system for 54,000 new visas. Under the new bill, the family preferences will no longer compete with the job-related "independent" preferences.

Higher priority for visas under the family preference system is given to the closest family members of citizens and permanent residents.

Assures a regular review of our immigration system by requiring the administration and a specially created independent commission to report every year on the effects of immigration on our country, by requiring them to recommend changes in the national level of immigration every 3 years, and by allowing Congress to accept or reject such modifications under expedited parliamentary procedures.

2. REFORM OF FAMILY PREFERENCES

Maintains unrestricted admission of the immediate family of U.S. citizens.

Increases the number of family preference visas, from 216,000 per year to 260,000 per year.

Allocates a higher percentage of family connection visa numbers to spouses and children of legal permanent residents (57 percent compared to 26 percent today). This will deal with the heavy backlog that exists today in this preference (for some countries, the wait is 7 to 9 years) and allow for the anticipated increase as legalized residents begin to petition for their families.

Limits the preferences for adult sons and daughters of legal permanent residents to unmarried children for whom the petition has been filed before their 26th birthday.

The preference for brothers and sisters of U.S. citizens is retained both in number of visas and definition.

Nearly all of the above changes were recommended by the Select Commission on Immigration and Refugee Policy.

3. INDEPENDENT IMMIGRANTS

The existing preferences for professionals, persons of exceptional merit, and persons with needed skills are combined with the new 54,000 nonpreference numbers to create an "independent" system of 120,000 visas annually.

The additional 54,000 visas are for applicants who qualify on the basis of the new point system. This selected immigrant category does not require individual labor certification, which has been a major obstacle to "independent" immigrants until now.

More visa numbers become available to "independent" immigrants who do not have family connections in the United States necessary to qualify under the current family preferences. Under current law, 90 percent of current immigrant flows are family related; only 10 percent reflect "new seed", nonfamily migration.

Establishes an employment generating investor visa requiring at least $1 million in new capital that will generate employment for at least 10 Americans or legal residents. Up to 4,800 conditional entry visas are made available annually, requiring that the investor return to the INS in 2 years to adjust his status to permanent resident alien. This will be done only if the investment continues to create employment for the requisite number of American workers, otherwise the investor is subject to deportation.

The new "point system" for the 54,000 additional selected immigrant visas be administered under a system established by regulations, but based upon the following categories and points:

4. ADMINISTRATIVE NATURALIZATION

Confers naturalization authority upon the Attorney General, rather than the courts.

Permits persons with naturalization petitions already filed to chose between judicial and administrative naturalization.

Authorizes the naturalization of certain Filipino World War II veterans of the U.S. Armed Forces.

POINT SYSTEM

	Maximum points	Percent of total
Criteria:		
Age: 10 points for age 21 to 35, 5 points for age 36–45	10	13
Education: 10 points for high schools, 10 points for bachelor's degree, 5 points for graduate degree	25	33
Occupational demand	20	27
Occupational training or work experience	20	27
Total	75	100

Note.—Minimum ponts needed to apply: 45.

COMPARISON OF VISA NUMBERS, UNDER CURRENT LAW AND S. 358

[Based on fiscal year 1988 data]

	Current law	S. 358—compromise bill	Changes in definitions
National level of immigration	none	600,000 total; 480,000 family, 120,000 independent.	
I. Family preferences:			
Immediate relatives (spouses and minor children of U.S. citizens; outside preference system).	no limit	no limit (220,000 entered in fiscal year 1988).	Same.
1st preference (unmarried adult sons and daughters of U.S. citizens).	54,000	24,200 (9 percent) [1]	Do.

COMPARISON OF VISA NUMBERS, UNDER CURRENT LAW AND S. 358—Continued

[Based on fiscal year 1988 data]

	Current law	S. 358—compromise bill	Changes in definitions
2d preference (spouses and unmarried sons and daughters of permanent residents).	70,200	148,000 (57 percent)	Petition for unmarried child must be filed before child's 26th birthday.
4th preference (married sons and daughters of U.S. citizens).	27,000	23,000 (9 percent)	Same.
5th preference (brothers and sisters of adult U.S. citizens).	64,800	64,800 (25 percent)	Do.
Total—family preferences	216,000	480,000	
II. Independent:			
Special immigrants (ministers of religion, etc.).	no limit	6,000 (5 percent) [2]	Do.
3d preference (professionals and exceptional ability).	27,000	27,600 (23 percent)	Advanced degree or exceptional ability require.
6th preference (skilled and unskilled workers).	27,000	27,600 (23 percent)	Limited to only skilled workers.
Employment generating investors	none	4,800 (4 percent)	New.
Selected immigrants	do	54,000 (45 percent)	New, administer according to new point system.
Total—independent	54,000	120,000	

[1] Percent of visa numbers going to each category after numbers reserved for immediate relatives of U.S. Citizens.
[2] Percent going to each category of independent visas.

III. Basis for Committee Bill

In addition to the general purposes outlined above for this legislation—namely, to reform the legal preference system and to promote nonfamily, "new used" immigration—the committee bill also addresses several other needed reforms.

1. ESTABLISHING A NATIONAL LEVEL OF IMMIGRATION

The committee bill contains a national level of immigration of 600,000 per year, excluding refugees. This level is approximately 105,000 persons (or 21 percent) higher than the level of immigration in 1988.

The committee believes it is important that the United States know how many immigrants will immigrate in each coming year. This knowledge will allow our country to make estimates of our future population size, demographic profile, housing and social service needs, and other projections that are essential to any government that plans for the near future. Most other industrialized, immigrant-accepting countries in the world set national levels of immigration.

Malcolm Lovell, former Under Secretary of Labor, testified before the Subcommittee on Immigration and Refugee Affairs during the 100th Congress that a specific national level of immigration,

> In the same way as a household budget, can be an important disciplining device in policymaking, forcing us to determine our priorities thoughtfully and to make our choices consistent with the nation's overall highest interest within agreed limits.

Some concern has been expressed that the establishment of a national level may have the unintended consequence of severely restricting immigration under the family preferences. This concern was heightened by testimony by the General Accounting Office in March which predicted that by 1988–99 "family preference immigration could drop to zero" under the committee bill.

However, the proposal does not set a rigid level of immigration. In addition to being 21 percent above present levels of immigration, it allows the President and Congress to adjust the level every 3 years under expedited procedures. Changes in immigration levels, when necessary, should be facilitated. In establishing the national level, it is clearly not the committee's intent that it be used as a device for arbitrarily restricting immigration. The national level mechanism merely ensures that increases and adjustments are by deliberate action, and not the unchecked growth that characterizes current law.

In addition, contrary to the committee bill of the 100th Congress, the current measure establishes a congressional commission to review national immigration needs. This commission is to present its findings and recommendations after 3 years, thus coinciding with the President's first 3-year review. In this way, Congress will have at its disposal during its first triennial review not only the views of the administration, but also the finding of its own commission, to assist in determining adjustments which may be warranted at that time.

While the commission established by the bill is not permanent in nature, the committee will consider extending it beyond its 3 year term if further close review of the impact of this legislation by an independent commission is warranted in later years.

2. EXPEDITING REUNION OF CLOSE FAMILY

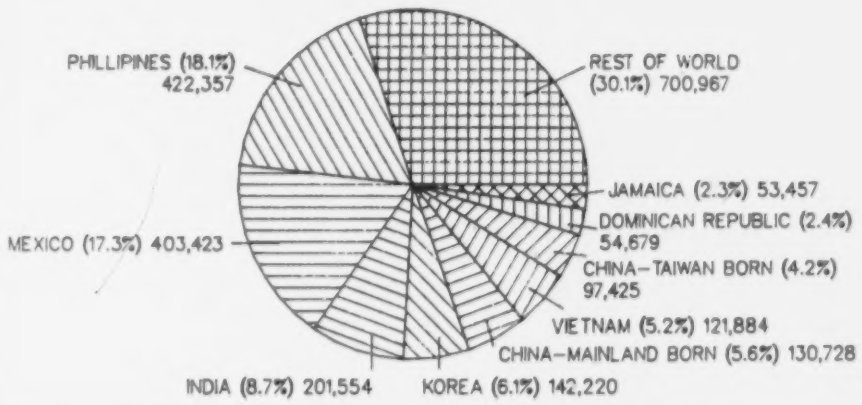
The committee bill increases 2d preference visas from the 70,200 available annually under current law to 148,000. As second preference involves the immigration of the spouses and children of permanent residents—the reunification of the nuclear family—the committee believes the doubling of this category is justified. In recent years, backlogs have been growing worldwide in this preference for immediate family members of residents, and will likely continue to grow unless additional visas are made available. The new demand will come, in part, through the family reunification needs of those now being legalized under the Immigration Reform and Control Act of 1986. Most immigration experts anticipate that by 1990, there will be a growing demand for 2d preference visas.

The committee bill maintains the current eligibility requirements for, and number of visas available under, the fifth preference. The fifth preference permits U.S. citizens to petition for their adult brothers and sisters, irrespective of their marital status. By maintaining current law, the committee is consistent with the 1981 Seclect Commission's recommendations to retain the eligibility of siblings regardless of marital status and not reduce available visas.

As originally drafted, S. 358 would have reduced these visas by 20 percent for 3 years and 67 percent thereafter and would have limited eligibility to never married brothers and sisters. Retention of the fifth preference is an integral part of the compromise contained in the committee bill.

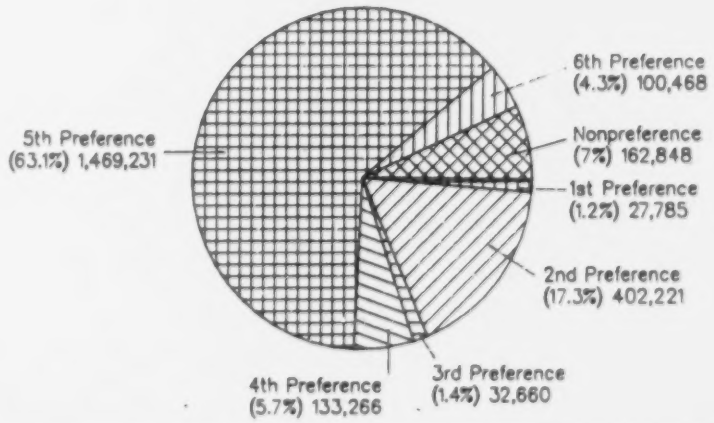
IMMIGRANT WAITING LIST

By Area of Chargeability; January, 1989



IMMIGRANT WAITING LIST

By Visa Category; January, 1989



3. PROMOTING MORE EQUAL ACCESS TO IMMIGRATION SYSTEM

A further purpose of the committee bill is to open the immigration system to those now virtually excluded. Currently the vast majority—some 85 percent—of U.S. immigration comes from Latin America and Asia, from countries where there still exist immediate family ties with U.S. citizens and legal permanent residents. Countries whose citizens no longer have close relatives in the United States have little opportunity to even come close to the per-country ceiling in preference categories.

The new, "independent" ctegory of 54,000 visas, distributed on the point system, would be a step in equalizing access to immigrant visas and to opening new opportunities for immigrants without family connections in the United States.

The creation of the new "independent" category does not limit the opportunitites for individuals already seeking immigrant visas. For these individuals, it provides an alternative path to legal entry based on their job skills, experience and education rather than strictly on family connections. The committee considered and specifically deleted granting additional points based upon the English language ability of the alien.

In promoting more equal access, the points distribution under this new visa category is developed with the national interest in mind. The highest allocation of points (20 each) are for occupations in demand in the United States and for applicants with specific occupational training and work experience. Lower points (10 each) are accorded to high school or college degrees and working age. The lowest points category (5 points) is assigned to a graduate degree.

In so doing, the committee bill not only expands immigration opportunities to those not currently enjoying them, but also ensures that those who immigrate under this category will likely possess skills which the Department of Labor determines to be in short supply.

4. ENSURING CONTINUED EMPLOYMENT-RELATED VISAS

In addition to the contributions to the labor force by the new points system, the committee bill continues the current immigration levels for existing employment-related visas (i.e., the third and sixth preferences of current law) at approximately 27,000 visas for each of the two categories. Overall independent visas under the bill total 120,000 annually (including investors and other special immigrants), an increase over current law of 66,000 visas annually.

IV. Immigration Policy and the National Interest

The committee intends that the national interest be a factor considered when revising our immigration laws. Indeed, when the Select Commission on Immigration and Refugee Policy issued its final report in 1981, it entitled it: "U.S. Immigration Policy and the National Interest." This theme is continues in this legislation.

Father Hesburgh, in his introduction to the Select Commission's Final Report, wrote the following:

> To the question: Is immigration in the U.S. national interest?, the Select Commission gives a strong but qualified yes. A strong yes because we believe there are many benefits which immigrants bring to U.S. society; a qualified yes because we believe there are limits on the ability of this country to absorb large numbers of immigrants effectively.

The proposed legislation follows these principles faithfully.

The committee bill endorses the Select Commission's "strong yes" by adding 100,000 visas to the present annual level of legal immigration to the United States. This is in addition to the current level of permanent immigration, which is as great as the permanent immigration allowed by all other countries of the world, combined. We should not fail to recognize the generosity of U.S. immigration policy—historical, current, and as proposed by this legislation.

The legislation endorses the Select Commission's "qualified yes" by recognizing that there are certain limits to our Nation's ability to effectively absorb immigrants. For the first time, a national level of immigration is established. The executive branch will be required to review the social and economic effects of immigration on the Nation, and then may make proposals for the revision of this national level every 3 years. Congress may then approve or disapprove of any revision in expedited procedures. This process will ensure that factors in the national interest relative to the formation of immigration policy will be considered, and that Congress will make an informed determination on the national level of immigration at least every 3 years.

The committee has also focused on the national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise, and by reserving immigration rights for the closest family members of recent immigrants, by providing for immigration opportunities for persons from a larger number of countries, and by establishing a national level of immigration that is periodically reviewed. It intends that this standard, that of the national interest, be the one considered for this and all future revisions of U.S. immigration law.

V. History of Current Legislation

Few legislative proposals have had greater scrutiny or consideration than the immigration reforms contained in the pending legislation. For more than a decade, reforming the system by which we select an admit immigrants has been the subject of interagency task forces, special commissions, and lengthy debate in Congress. The pending legislation reflects this study and deliberation, and it represents a genuine consensus on what needs to be done.

1. SELECT COMMISSION AND 1986 REFORMS

Both the Ford and Carter administrations advanced proposals for immigration reform. In 1978, Congress recognized the urgent need for a comprehensive review of immigration law and policy—regarding illegal immigration as well as legal immigration—and established the Select Commission on Immigration and Refugee Policy,

chaired by the Reverend Theodore Hesburgh. The Select Commission submitted its final report to the Congress on March 1, 1981, after 2 years of substantive hearings and studies, and a distinguished record of deliberation.

The structure of the pending legislation finds its origins in the 1981 recommendations of the Select Commission, including, for example:

The separation of two types of immigrants (family and independent) into distinct admissions categories;

The creation of a new area of general immigration within the independent category, such as the proposed "point system"; and

The continuation of family reunion as a major element of immigration.

These recommendations were adopted by near unanimous vote of the Commission and reflect a broad agreement on the reforms proposed in the committee's bill.

The Select Commission's far-reaching recommendations became the basis for other subsequent immigration reform initiatives. President Reagan used the Commission's proposals to form his administration's immigration reform strategy in 1981. And comprehensive immigration reform bills were introduced in the 97th, 98th, and, finally, the 99th Congresses, all reflecting the Select Commission's work.

In the Senate, under the leadership of Senator Simpson, then chairman of the Subcommittee on Immigration and Refugee Policy from 1981–86, dozens of hearings were held on the Select Commission's recommendations and the Senate's omnibus immigration reform bills. The hearings and the bills introduced in those Congresses addressed the need for reform of laws related to illegal and legal immigration. At the same time, similar proposals were considered in the House of Representatives under the leadership of Judiciary Committee Chairman Peter Rodino and Representative Romano Mazzoli, chairman of the House Subcommittee on Immigration, Refugees and International Law.

In the 97th Congress alone, the Senate subcommittee held no fewer than 16 hearings and 5 consultations on immigration reform. Many of these dealt solely and specifically with the need to deal with our legal immigration system. And 7 days of hearings in the 98th and 99th Congresses also covered legal immigration issues.

However, in the end, Congress opted to limit the scope of the reform legislation only to problems of illegal immigration. Not dealt with in the landmark Immigration Reform and Control Act of 1986 were issues addressed by the Select Commission on Immigration and Refugee Policy related to much-needed reform of legal immigration.

2. LEGISLATION IN 100TH CONGRESS

With illegal immigration reforms and controls firmly in place, the Subcommittee on Immigration and Refugee Affairs, under the chairmanship of Senator Kennedy, returned its attention to legal immigration questions. On August 6, 1987, Senator Kennedy introduced S. 1611; the subcommittee held two hearings on this bill, on

October 23, 1987, and December 11, 1987. The December 11 hearing was also devoted to a review of Senator Simpson's proposals in this area, which he subsequently introduced on February 4, 1988, in S. 2050.

On February 4, 1988, at a meeting of the Judiciary Committee, Senator Kennedy and Senator Simpson announced that they had been working over the previous weeks to fashion a compromise bill.

That compromise bill, S. 2104, was favorably reported by the Judiciary Committee and the full Senate considered and adopted it on March 15, 1988, by a vote of 88 to 4. However, no action was taken in the House of Representatives.

3. PENDING LEGISLATION IN 101ST CONGRESS

Resuming the effort to move forward on these longstanding proposals for immigration reform, Senators Kennedy and Simpson reintroduced again the Immigration Act of 1989 (S. 358) on February 7, 1989, upon which a further subcommittee hearing was conducted on March 3rd, along with the immigration proposals contained in S. 448, a bill introduced by Senator Simon. This subcommittee acted to report both bills to the full committee for final action and compromise.

After several weeks of intensive consultation, the members of the Immigration Subcommittee agreed to fashion a compromise immigration bill that reflected a compromise agreement on what needs to be done to start the process of reforming our system of admitting legal immigrants to the United States. On June 8, 1989, at the Judiciary Committee meeting, Senators Kennedy, Simpson, and Simon offered an amendment in the nature of a substitute to S. 358, which was adopted by a recorded vote of 12 to 2. During the course of the committee's consideration an amendment offered by Senator Simon, to delete English language ability as a criterium to be considered in the new independent immigration "point system" was adopted by a vote of 12 to 2 and the required points were adjusted accordingly.

VI. SECTION-BY-SECTION ANALYSIS

Title I—Immigration Act of 1989

SECTION 101: SHORT TITLE; REFERENCES IN ACT

The short title is "Immigration Act of 1988"; references are to the Immigration and Nationality Act.

SECTION 102: NATIONAL LEVEL OF LEGAL IMMIGRATION

Subsection (a) establishes a national level of immigration—600,000 per year—and describes the categories of immigrants that are included within that national level.

Four hundred and eighty thousand visas per year are provided for immediate relatives of U.S. citizens and family connection (preference) immigrants. This figure represents an increase in the current level of family-connected immigration with additional visas for growth in immediate relatives.

There is no numerical limitation or restriction on the admission of immediate relatives of U.S. citizens, which take precedence over

the other family connection visas. The immediate relative admissions are subtracted from the 480,000 visas to determine the level of family preference immigration.

In addition, 120,000 visas per year are provided solely for independent preference immigrants. In short, the total level of legal immigration is set at 600,000 per year divided into the separate tracks for family-connection immigrants (480,000) and independent immigrants (120,000), at least for the first 3 fiscal years.

This subsection also requires the Attorney General, in consultation with the Departments of State, Labor, Housing and Urban Development and HHS, and the Environmental Protection Administration, to prepare and submit to the President and the Congress an annual report on the social, economic, and environmental impacts of immigration. In addition, beginning 3 years after the date of enactment, and at 3-year intervals thereafter, the President will submit to Congress a determination to maintain, lower, or raise the numerical levels set for family connection immigration and independent immigration. If the President's determination contains an increase or decrease in the national level of immigration of 5 percent or less, then the determination takes effect unless Congress objects within 5 months. Special procedures are established to expedite consideration of any objection. If the proposed increase or decrease in the national level is greater than 5 percent, Congress must act affirmatively to approve the proposal. Similar special procedures are available for this approval.

Subsection (b) of section 2 sets an annual limitation on preference immigrants from each foreign state. That limitation is no more than 7 percent per country of the number of visas available in the family connection preference category worldwide, and 7 percent of the number of visas available in the independent category, worldwide. In the family connection category, if "immediate relative" immigration from any single foreign state exceeds either the per country limitation (described above) or its level in the previous fiscal year (whichever figure is higher), the amount of any such increase in admissions of immediate relatives (but no more than half of that state's limitation) is subtracted from the family preference visas allotted to that foreign state.

SECTION 103: PREFERENCE SYSTEM FOR ADMISSION OF IMMIGRATANTS

Subsection (a) of amended section 203 changes the percentages for allocation of family connection visas and redefines the beneficiaries of two of the preferences. The following categories are recognized, in the following order, with visa number measured as a percentage of the total number allowed for family connection immigrants under section 2:

(1) Unmarried adult sons and daughters of U.S. citizens, 9 percent;

(2) spouses and unmarried sons and unmarried daughters (under age 26 of permanent resident aliens and pending petitions of unmarried sons and daughters over 25, 52 percent, plus unused visas from the previous category;

(3) married sons and daughters of U.S. citizens, 10 percent plus unused visas from the previous two categories; and

(4) brothers and sisters of adult U.S. citizens, 25 percent, plus unused visas from the previous three categories.

Subsection (b) of amended section 203 creates a separate preference system for independent immigrants. The following categories are created, in the following order, with available visa numbers measured as a percentage of the numerical limit on independent immigrants (120,000 for the first 3 years, and 150,000 each year thereafter):

(1) Special immigrants, 5 percent;

(2) aliens of exceptional ability or members of the professions of holding advanced degrees, 23 percent;

(3) skilled workers for which qualified workers are not available in the United States, and members of the professions holding bachelor's degrees, 23 percent;

(4) aliens who have invested, or are actively in the process of investing, at least $1 million in a new commercial enterprise which will create at least 10 U.S. jobs, up to 4 percent; and

(5) selected immigrants, admitted without requirement of labor certification or U.S. job offer, and chosen on the basis of a point system. Visa numbers not used in the first four categories of independent immigrants go the fifth category.

The point system gives consideration to aliens with the following skills or attributes;

(1) Desirable age (21–44);

(2) education (high school, bachelor's degree, graduate degree);

(3) work in an occupation where an increase in demand for workers has occurred, and where the supply of U.S. workers will not meet that demand; and

(4) specific work experience or training in such an occupation. Of a possible 75 points, 45 would be required to qualify to resister.

Under subsection (c) of amended section 203 derivative status is granted to spouses and children of all the catetgories of independent immigrants indicated above except selected immigrants.

Subsection (d) of amended section 203 continues the current chronological order of consideration for all visa categories except selected immigrants. In the category of selected immigrants 20 percent of the visas available will go to registrants scoring 65 points or more; the remaining 80 percent of the visas will be drawn from all registrants scoring 45 points or more. If there are more qualified applicants than visas available for selected immigrants then the selected immigrants will be chosen on a random basis from among the qualifying applicants.

Subsection (f) of amended section 203 provides for the termination of registration for an alien who fails to apply for an immigrant visa within 1 year of its availability, unless the alien provides that failure to apply was due to circumstances beyond his control. This subsection also repeals provisions for visas under section 203(a)(7) (non-preference visas)

Subsection (b) of section 103 establishes changes in petitioning procedures and provides for the filing of a notice of continuing intent to be admitted to the United States in the 2 fiscal years previous to the fiscal year in which the immigrant visa becomes avail-

able. Provisions are made for the filing of a petition for special immigrant category with the Attorney General, with the exception of immigrants who are former employees of the U.S. Government abroad who have been recommended for special immigrant status. The latter, if notificed of an approved recommendations, would file with the Secretary of State. This subsection also authorizes the Secretary of State to establish regulations for the filing of applications for selected immigrant status. The place of filing may be designated to inside the United States, but the applicant must be physically outside the United States at the moment of application. The Secretary fo State may designate an application period for the filing of selected immigrant petitions and after such period may issue visas for selected immigrants for the next 2 fiscal years. Mis-representation in applicants for selected immigrant status is deemed a violation of section 212(a)(19). This subsection also establishes the "unmarried" sons or daughters of permanent residents who enter under the provisions of the second preference may not subsequently petition for spouses whom they married and later divorced prior to gaining the benefits of this preference.

Subsection (c) of section 103 revises section 212(a)(14) to exclude certain classes of immigrants unless the Secretary of Labor certifies that there are not sufficient qualified workers available in the United States and that employment of the alien will not adversely affect the wages and working conditions of workers in the United States. The Secretary of Labor may substitute for that "national standard" a "regional" certification that there are not sufficient workers who are able, willing, qualified, and available at the time and at the place where the alien is to perform the skilled labor. The Secretary of Labor may use the labor market information without regard to specific job opportunity, but if the determination is adverse the Secretary of Labor shall make a job specific certification if the employer submits evidence that such specific certification would result in a different determination. This subsection also calls for a study of the labor certification process in 1992 to determine whether the changes in the laws have resulted in a more simplified and expeditious processing labor certifications.

SECTION 104: DETERRING IMMIGRATION-RELATED ENTREPRENEURSHIP FRAUD

Section 104 establishes a 2-year conditional basis for permanent resident status for those aliens and their dependents who receive the benefits of the employment-generating investor visa. The section outlines procedures to be followed in making as determination on the status of the alien based on the alien's having complied with the requirements of the status.

SECTION 105: MISCELLANEOUS AND TECHNICAL CHANGES

Section 105 makes miscellaneous, conforming, and technical changes to the Immigration and Nationality Act.

SECTION 106: USER FEES

Section 106 directs the Secretary of State to provide for a schedule of fees for the processing of visa petitions which are sufficient to cover the State Department's administrative expenses.

Section 106 also provides for user fees for the processing of selected immigrant visas. In addition, a fund of up to $20 million is credited to the Department of State from fees collected by consular officers to pay the expenses of research and development of visa and passport functions.

SECTION 107: COMMISSION ON LEGAL IMMIGRATION REFORM

Section 107 establishes a nine-member commission effective February 1, 1991, with a chairman appointed by the President, two members each appointed by the Speaker of the House, the House Minority Leader, the Senate Majority Leader, and the Senate Minority Leader.

The Commission is to transmit its final report to the President and the Congress no later than February 1, 1994. The report shall consider family reunification requirements, the impact of immigration on the economy, and order factors.

SECTION 108: EFFECTIVE DATES AND TRANSITION

This section makes the effective date of the bill October 1, 1990. It shall apply to all visas issued beginning with fiscal year 1991.

Title II—Naturalization Amendments of 1989

SECTION 201: SHORT TITLE; REFERENCES IN TITLE

The short title is "Naturalization Amendments of 1989"; references are to the Immigration and Nationality Act.

SECTION 202: ADMINISTRATIVE NATURALIZATION

This section gives the Attorney General the sole authority to naturalize persons as citizens of the United States. In the event of a denial of naturalization by the Attorney General, review is provided by the Board of Immigration Appeals. Decisions of the board are reviewable *de novo* by U.S. district courts.

SECTION 203: SUBSTITUTING 3 MONTHS RESIDENCE IN INS DISTRICT OR STATE FOR 6 MONTHS RESIDENCE IN A STATE

This section is a technical amendment to require residence within the State or immigration service district for 3 months.

SECTION 204: PUBLIC EDUCATION REGARDING NATURALIZATION BENEFITS

Section 204 directs the Attorney General to broadly disseminate information regrading naturalization and authorizes the Attorney General to make grants to community and other groups for such purposes. $1 million is authorized to carry out this section.

SECTION 205: NATURALIZATION OF NATIVES OF THE PHILIPPINES THROUGH ACTIVE-DUTY SERVICE IN THE ARMED FORCES DURING WORLD WAR II

This section exempts certain Filipino war veterans only from the geographic and residency requirements of section 329 of the Immigration and Nationality Act. The exempted veterans are those who served honorably in the U.S. Armed Forces during the period between September 1, 1939, and December 31, 1946.

SECTON 206: CONFORMING AMENDMENTS

This section includes conforming amendments

SECTION 207: EFFECTIVE DATES AND SAVINGS PROVISIONS

No new court petitions are permitted after "first day after the fourth month beginning after the date of enactment." Other changes made by this act are effective upon enactment.

Section 207 also permits persons with pending petitions to have such petitions considered either by a court or by the Attorney General.

VII. Committee Intent

Although this is not an exclusive statement of the committee's legislative intent, the following addresses aspects of the legislation which the committee wishes to discuss in detail:

SECTION 102: NATIONAL LEVEL OF IMMIGRATION

The worldwide level of family connection immigration is set at 480,000 persons per year. Refugees and asylees are not included in this level. Immediate relatives of U.S. Citizens continue not to be subject to numerical limitation, and thus their annual immigration may exceed 480,000 per year (the present number of immediate relatives is approximately 220,000 per year). However, the number of immediate relatives immigrating in a fiscal year is subtracted from 480,000 to determine how many family-connection preference immigrants (described in amended section 203(a) will be admitted in the following fiscal year. The committee wishes to emphasize that preference system visas under amended section 203(a) will only be available after the subtraction has been performed.

The worldwide level of independent immigration is set at 120,000 per year. This level of independent immigration is not affected by the level of immediate relative or other family connection immigration. Immigrant visa distribution under amended section 201(c) and section 201(d) will be interdependent only when the maximum number of visas in either 201(c) or 210(d) are not actually issued in a fiscal year. In that case, the difference between the maximum number allowed and the number actually issued in one section may be allocated for use by the other subsection.

Amended section 201(e) provides for a triennial review of the numerical levels described in amended section 201(c)(1)(A) and 201(d)(1)(A). This provision is intended to ensure that the administration and Congress regularly consider, and when necessary revise, the levels of immigration to this country. The committee di-

rects the executive branch to consider the factors described in paragraphs 201(e)(1) (A), (B), (C), and (D) when seeking to revise the numerical levels, and to justify any proposed revision based on those factors.

Section 202 is amended to revise the current method by which maximum levels of immigration are set for individual countries. Each country may receive up to 7 percent of the total preference visas available for family connection immigration, and up to 7 percent of the total visas available for independent immigration. However, a country's unused visas in one category may not be transferred to accommodate excess demand in the other category. In addition, amended sections 202(a)(2)(C) and 202(a)(3)(B) are intended to deal with hypothetical situations when future worldwide visa demand may not equal the number of visas available. In every other circumstance, the current per-country limtiations apply.

SECTION 103. IMMIGRANT PREFERENCE SYSTEM

The family connection preference system, described in amended section 203(a), reflects the committee's recognition that, as there are only a finite number of visas available for immigrants with family connections, our first obligation is to the closest family members. Thus, the previous preference system is revised to increase the percentage of visas allocated to the spouses and unmarried sons and daughters (under 26 years of age) of permanent resident aliens.

The committee's goal in adopting a distinct category of nonfamily immigration is to make more flexible the standards geared to our changing economy to increase the number of admissible immigrants.

However, these adjustments are intended to be incorporated into the Immigration and Nationality Act (INA) in a manner that respects the longstanding principle that "one of [the United States immigration law's] great purposes was to protect American labor against the influx of foreign labor." (*Karnuth* v. *United States*, 279 U.S. 231, 243 (1929)). Consistent with that principle, the added number of immigrants is held to a level that the United States labor market should be able to absorb. Within that limit, given the choice, the committee has concluded that it is better that work for which the United States requires entrants from abroad be done by persons with the full rights of permanent residents, a long-term commitment to the country, and the opportunity be become citizens.

These liberalizing changes should go far toward meeting the legitimate business needs of American employers and by so doing will result in a substantial reduction in the number of nonimmigrant visas otherwise warranted under the labor certification standards of the INA.

In order for the committee's purposes to be realized, it is important, too, that the provisions of the INA governing both immigrant and nonimmigrant visas be administered in a manner that pays scrupulous regard to the immigration law's labor protection principles. In this regard, the committee emphasizes that this bill contains in its revision of INA section 203(b)(2)(C) language explaining

that "[i]n determining whether an immigrant has exceptional ability, the possession of a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning or a license to practice or certification for a particular profession or occupation shall not by itself be considered sufficient evidence of such exceptional ability."

This provision does not make a novel point but is rather a specific declaration of what has been Congress' intent in the "exceptional ability" phrase in the existing third preference and its counterpart language in the nonimmigrant visa provision of the INA. As this language makes plain, these phrases refer to persons who are particularly qualified in their callings, not simply to persons who have callings. The committee, in expanding the number of admissible nonfamily immigrants, is proceeding on the clear understanding that the counterpart temporary visa provision is to be administered in harmony with the new section 203(b)(2) preference immigration category.

For example, the committee has taken note of, and relied upon, the reasoning of *Bricklayers and Allied Craftsmen* v. *Meese,* 616 F. Supp. 1387 (N.D. Cal. 1985), with regard to the proper scope of the B temporary visa category. At issue in that case was the issuance of B-1 "temporary visitor for business" visas to laborers coming to United States temporarily to masonry work. The government provision of the INA, section 101(a)(15)(B) authorizes visas for aliens "(other than one coming for the purpose * * * of performing skilled or unskilled labor * * *) * * * who is visiting the United States temporarily for business * * *" The INS claimed justification for the visas in an agency operations instruction that allowed B-1 classification for persons coming to this country "to install, service or repair commercial or industrial equipment or machinery purchased from a company outside the United States * * *" The court pointed out that "section 101(a)(15)(B) and 101(a)(15)(H)(ii) of the Act were intended to restrict the influx of aliens seeking to perform skilled or unskilled labor in the United States." The court there concluded that the operations instruction "is inconsistent with both the language and the legislative intent [of the two provisions cited just above]" and thus "contravenes the act." (*Bricklayers* 616 F. Supp. at 1398, 1401, 1403.) the committee's actions in expanding immigration rest on this understanding of the narrow scope of the B. temporary visa category, and, consequently, the narrow scope of any implementing operations, instructions, or regulations.

Amended section 203(b)(2) refers to members of the professions holding "advanced degrees." The committee intends that an advanced degree be a degree received which requires initial completion of a 4-year course of undergraduate study, followed by at least one academic year of graduate study, and which is normally referred to as a master's degree.

Amended section 203(b)(3) provides visas for: (1) Qualified immigrants who are capable, at the time of petitioning, of performing labor (requiring at least 2 years training or experience) for which qualified U.S. workers are not available, and (2) qualified immigrants who are members of the professions and hold bachelor's degrees. The committee wishes to clarify that the 2-year training or

experience requirement applies to the position for which certification is sought, and to the alien at the time of petitioning. The committee further wishes to clarify that an alien who holds a bachelor's degree, and who is not a member of the profession, may receive a visa provided that he meets all the other equirements of amended sections 203(b)(3)(A)(i) and 203(b)(3)(B).

Amended section 203(b)(4) is intended to create new employment for U.S. workers and to infuse new capital into the country, not to provide immigrant visas to wealthy individuals. The committee endorses the present investor requirements as described in 22 CFR 40.7(a)(14), note 1.3 (except for the investment amount and number of individuals to be employed, and except for note 1.3–6). The term "benefit the U.S. economy" may be used to assess the comparative value to the U.S. economy of the proposed new commercial enterprise. The creation of the requisite number of U.S. jobs need not occur immediately upon immigration of the alien entrepreneur, but the job creation should be completed within a reasonable time—in most cases not longer than 6 months after the alien's admission. Finally, the committee intends that processing of an individual visa not continue under this section if it becomes known to the Government that the money invested was obtained by the alien through other than legal means (such as money received through the sale of illegal drugs).

Amended section 203(b)(5) provides a number of visas to be distributed based on a point selection system. The committee emphasizes that a qualifying score on a visa application in this category only entitles an alien to have his or her application considered for random selection during 2 fiscal years. Such a score in no way entitles the alien to an immigrant visa. The committee also intends that the Department of Labor develop lists of occupations which are experiencing or will likely experience increased labor demand, occupations which are experiencing or will likely experience a shortage of U.S. workers, and a list of hours worked or time spent in particular occupations which would qualify an alien to receive point under the "training and work experience" category (section 203(b)(5)(v)). The term "increased demand" in section 203(b)(5)(B)(iv)(I) means demand for labor only, without regard to the supply of labor.

Amended section 212(a)(14) describes the standard upon which labor certifications for visas under sections 203(b) (2) and (3) must be conducted. The "national" U.S. worker availability standard is the preferred standard, but the Department of Labor, in its discretion, may use the alternate "regional" standard outlined in the second sentence of section 212(a)(14) if this would promote efficiency or otherwise be justified. Additionally, in the case of an employer requesting an individual labor certification after an adverse decision, the "evidence" he or she must submit should be sufficient to establish the reasonable possibility that individual labor certification would be led to a different result.

SECTION 104: DETERRING ENTREPRENEURSHIP FUND

This section imposes a 2-year conditional status on all aliens, and their dependents, who are issued immigrant visas based on job cre-

ation and investment described in section 203(b)(4). The committee intends, by this section, to encourage all aliens receiving visas in this section to continue their new commercial enterprises so that the creation of U.S. jobs and the infusion of capital into the U.S. economy is sustained.

SECTION 106: USER FEES

The committee recognizes that the point selection system under section 203(b)(5) will create additional administrative burdens for the Department of State and intends that such system require user fees that will offset the administrative or other costs. Pursuant to subsection (b) of section 6, the fees collected should be returned, in an amount commensurate with the additional costs, to the State Department for the purposes of administering the system.

SECTION 107: COMMISSION ON LEGAL IMMIGRATION REFORM

Section 107(c) of the committee bill describes the specific issues that the Commission should consider. In section 107(c)(1) "priority of family preferences visas" refers to the system of immigration preferences in the family-connection preference system (new INA section 203(a)). The committee intends that the Commission consider whether, under this system, closer family members (for example, under new section 203(a)(2)) should be kept waiting for visas while more distant family members (for example, under new section 203(a)(4)) are being granted admission to the United States.

In section 107(c)(3), the term "natural resources" is meant to be read in a very broad fashion, including but not limited to, air, water, land, fossil fuels, and plant and animal life.

In section 107(c) the committee specifically intends for the Commission to examine "the impact [of] the establishment of a worldwide ceiling . . . upon the availability . . . of family preference visas." In giving the Commission this specific charge, the committee is mindful of the testimony of the General Accounting Office which concluded that "family preference immigration could drop to zero" under the bill by the year 1999. The committee desires that continued attention be placed on that concern by the Commission.

VIII. Committee Action

On June 8, 1989, with a quorum present, by a vote of 12 to 2, ordered the bill to be favorably reported with an amendment in the way of a substitute offered by Senator Kennedy and Senator Simpson and an amendment offered by Senator Simon which was adopted by a 12 to 2 vote.

Recorded votes:

1. Simon amendment to delete English language as a points category for selected immigrants:

YEAS (12)	NAYS (2)
Biden	Thurmond
Kennedy	Simpson
Metzenbaum	
DeConcini	
Leahy	

Heflin
Simon
Kohl
Hatch
Grassley
Specter
Humphrey

2. To favorably report the bill, as amended:

YEAS (12)	NAYS (2)
Biden	DeConcini
Kennedy	Hatch
Metzenbaum	
Leahy	
Heflin	
Simon	
Kohl	
Thurmond	
Simpson	
Grassley	
Specter	
Humphrey	

IX. CBO Cost Estimate

U.S. Congress,
Congressional Budget Office,
Washington, DC, June 16, 1989.

Hon. Joseph R. Biden,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the attached cost estmate on S. 358, a bill which would amend the Immigration and Nationality Act to revise the current legal immigration system and provide for administrative naturalizaton, as ordered reported by the Senate Committee on the Judiciary on June 8, 1989.

Should the Committee so desire, we would be pleased to provide further details.

Sincerely,

Robert D. Reischauer, *Director.*

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 358.

2. Bill title: A bill to amend the Immigration and Nationality Act to change the level, and preference system for admission, of immigrants to the United States, and to provide for administrative naturalization, and for other purposes.

3. Bill status: As ordered reported by the Senate Committee on the Judiciary on June 8, 1989.

4. Bill purpose: Title I of the bill revises the current system which governs the legal entry of immigrants into the United States. Specifically, it sets the national level of immigration at 600,000 per year which represents the issuance of approximately

110,000 additional visas over current levels. It continues to give preference to applicants with close family ties within the United States, while at the same time creating a new method of awarding visas to persons with no family connections within the United States. Under this new method called a "point system", immigrants would first be rated according to characteristics such as age, education, and job skills. Those who are rated above a certain level would be eligible for visas which would be awarded according to a random drawing conducted by the State Department. Title I also authorizes funds for a commission to review the impact of the provisions contained in Title I.

Title II of S. 358 would amend the Immigration and Nationality Act to empower the Immigration and Naturalization Service (INS) to issue the final determination on applications for U.S. citizenship and to administer the oath of citizenship. Under current law, the INS reviews all applications for naturalization and makes a recommendation to the U.S. District Courts, who then makes the final decision and administers the oath of citizenship. Under this bill, the INS would make a final decision; the applicant would then have the option of being sworn in by a judge or by an INS official designated by the Attorney General.

5. Estimated cost to the Federal Government:

(By fiscal years, in millions of dollars)

	1990	1991	1992	1993	1994
Revenues:					
Estimated revenues	0	30	10	30	10
Estimated reclassification of revenues as offsetting collections	0	−20	−20	−20	−20
Net revenue effect	0	10	−10	10	−10
Offsetting collections: estimated outlays	0	−20	−20	−20	−20
Amounts subject to appropriations action (function 150):					
Estimated authorization level	0	20	20	20	20
Estimated outlays	0	17	19	20	20
Net outlay effect	0	−3	−1	0	0
Net deficit effect	0	−13	9	−10	10

In addition to the budget impact shown in the table, CBO estimates that enactment of Title II could result in savings to the federal government up to $2 million annually; however such savings might be offset in future years by a corresponding reduction in fees, and would result in outlay reductions only if appropriations were correspondingly reduced.

BASIS FOR ESTIMATE

Title I

Section 106 of the bill gives the State Department the authority to charge new fees which would cover the cost of implementing the new point system. These fees are expected to be classified as revenues. Other new revenues shown in the table is irregular because of the way the point system is expected to be administered. Every two years, a new pool of applicants will be registered for the

random drawing. Because of the high demand for the new visas, it is expected that most immigrants will register for the random drawing in the first years of every two-year period. Revenues from new fees are therefore expected to be higher in the first year than in the second year of each period.

Receipts from visa fees are currently deposited into the Treasury as miscellaneous receipts and thus are not specifically assigned to the State Department. In order to reimburse the State Department for added costs, Section 106 also authorizes an annual transfer of up to $20 million of visa fees to a State Department account. This transfer is intended to cover the State Department's cost of implementing the new point system and issuing the new visas, but will cover cost for other visas and passport related functions as well. Under current law these fees are classified as revenues, but under the bill they would be classified as offsetting collections. The estimated offsetting collections shown in the table are the result of the transfer of funds from the Treasury.

Section 107 of the bill authorizes such sums as necessary for a commission to review and evaluate the impact of the amendments made by Title I. The cost of this commission, including personnel and non-personnel expenses, is estimated to be approximately $400,000 per year. This estimated cost is slightly lower than the current costs of a similar commission created by the Immigration Reform and Control Act of 1986.

Though the bill specifies an effective date of October 1, 1990 for most provisions of Title I, the estimate assumes enactment of the legislation by October 1, 1989. Beginning in fiscal year 1991, the estimate also assumes an annual appropriation of $20 million from the transferred funds to offset costs incurred by the State Department. Outlays are estimated using historical spendout rates.

Title II

The INS and the Judiciary could realize savings of up to $2 million annually if Title II of this bill were enacted. Such savings could result from the elimination of some redundancy in the current naturalization process. In future years, however, the INS could adjust the fees collected for naturalization to reflect the lower cost of the program.

CBO estimates that the INS could save $500,000 to $1 million annually, and that the Judiciary could save roughly $1 million annually, which would result in outlays savings if appropriations are correspondingly reduced. These savings would be the result of a simplifications of the final stages of the naturalization process. The district courts perform many administrative functions in the current process, many of which duplicate work done by the INS. Title II of S. 358 would eliminate much of this duplications by shifting responsibility from the courts to the Attorney General. The range of savings shown for the INS includes additional expenditures for securing facilities for the naturalization ceremony. The estimated savings for the Judiciary include an assumption that one-third of the applicants would choose to receive the naturalization oath from a judge.

We cannot project whether these savings would lead to any future adjustment in the fees that the INS collects for processing

citizenship applications. These fees, which are intended to cover the costs of the program, are set through regulation and reviewed every two years; the next review is scheduled to occur in 1991. The INS does not currently include the expenses incurred by the courts when setting the fees.

6. Estimated Cost of State and Local governments: Under Title II, state and local governments would incur some costs if this bill were enacted because applicants could choose to receive the oath of citizenship from state or local court judges. We do not expect such costs to be significant, since most applicants are likely to be sworn in at federal facilities.

7. Estimate Comparison: None.

8. Previous CBO cost estimate: None.

9. Estimate prepared by: Kent Christensen, 226-2840; Michael Sieverts, 226-2860; and Mark Booth, 226-2680.

10. Estimate approved by: Charles Seagrave (for James L. Blum, Assistant Director for Budget Analysis.)

X. Regulatory Impact Statement

In compliance with subsection (b) of paragraph 11 of rule XXVI of the Standing Rules of the Senate, it is hereby stated that the only significant regulatory impact that will result from the committee bill will come with the implementation of the new "selected immigrants" category, the revision of the labor certification process provided in section 103(c), and such additional regulations as the Attorney General may require to implement the administrative naturalization procedures under title II. Otherwise, the committee bill simply reforms existing regulations and procedures without adding to them.

XI. Changes in Existing Law

In compliance with paragraph (12) of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 358 are as follows: Existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman.

IMMIGRATION AND NATIONALITY ACT

As Amended through January 1, 1989

(Act of June 27, 1952; 66 Stat. 163; 8 U.S.C. 1101 et seq.)

WITH AMENDMENTS AND NOTES ON RELATED LAWS

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act, divided into titles, chapters, and sections according to the following table of contents, may be cited as the "Immigration and Nationality Act" [8 U.S.C. 1101, note].

TABLE OF CONTENTS

TITLE I—GENERAL

Sec. 101. Definitions.

* * * * * * *

TITLE II—IMMIGRATION

Chapter 1—Selection System

Sec. 201. [Numerical limitations.] *Worldwide level of immigration*
Sec. 202. Numerical limitation to any single foreign state.

* * * * * * *

Chapter 2—Qualifications for Admission of Aliens; Travel Control of Citizens and Aliens

Sec. 211. Documentary requirements.

* * * * * * *

Sec. 217. Visa waiver pilot program for certain visitors.
Sec. 218. Conditional permanent resident status for certain alien entrepreneurs, spouses, and children.

* * * * * * *

TITLE III—NATIONALITY AND NATURALIZATION

* * * * * * *

Chapter 2—Nationality Through Naturalization

[Sec. 310. Jurisdiction to naturalize.]
Sec. 310. Naturalization authority.

* * * * * * *

[Sec. 334. Petition for naturalization; declaration of intention.

Sec. 334. Application for naturalization; declararation of intention.
[Sec. 335. Investigation of petitioners; preliminary examinations on petitions.
Sec. 335. Investigation of applicants; examination of applications.
[Sec. 336. Final hearing in open court; examinaton of petitioner before the court.
Sec. 336. Hearings on denials of applications for naturalization.
Sec. 337. Oath of renunciation and allegiance.
Sec. 338. Certificate of naturalization; contents.
Sec. 339. [Functions and duties of clerks.]
Sec. 339. Functions and duties of clerks and records of declarations of intention and applications for naturalization.

* * * * * * *

TITLE I—GENERAL

DEFINITIONS

SECTION 101. [8 U.S.C. 1101] (a) * * *

(36) The term "State" includes [except as used in section 310(a) of title III] the District of Columbia, Puerto Rico, Guam, and the Virgin Islands of the United States.

* * * * * * *

(b) As used in title I and II—

(1) The "child" means an unmarried person under twenty-one years of age who is—

* * * * * * *

(F) child, under the age of sixteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section [201(b),] *201(b)(2)(A)(i),* who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole of surviving parent is incapable of providing the proper care and has in writing irrevocably released the child for emigration and adoption; who has been adopted abroad by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who personally saw and observed the child prior to or during the adoption proceedings; or who is coming to the United States for adoption by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who have or has complied with the preadoption requirements, if any, of the child's proposed residence: *Provided,* That the Attorney General is satisfied that proper care will be furnished the child if admitted to the United States: *Provided further,* That no natural parent or prior adoptive parent of any such child thereafter, by virtue of such parentage, be accorded any rights, privilege, or status under this Act.

* * * * * * *

TITLE II—IMMIGRATION

CHAPTER 1—SELECTION SYSTEM

[NUMERICAL LIMITATIONS

[SEC. 201. [8 U.S.C. 1151] (a) Exclusive of special immigrants defined in section 101(a)(27), immediate relatives specified in subsection (b) of this section, and aliens who are admitted or granted asylum under section 207 or 208, the number of aliens born in any foreign state or dependent area who may be issued immigrant visas or who may otherwise acquire the status of an alien lawfully admitted to the United States for permanent residence, shall not in any of the first three quarters of any fiscal year exceed a total of seventy-two thousand and shall not in any fiscal year exceed two hundred and seventy thousand: *Provided*, That to the extent that in a particular fiscal year the number of aliens who are issued immigrant visas or who may otherwise acquire the status of aliens lawfully admitted for permanent residence, and who are subject to the numerical limitations of this section, together with the aliens who adjust their status to aliens lawfully admitted for permanent residence pursuant to subparagraph (H) of section 101(a)(27) of section 19 of the Immigration and Nationality Amendments Act of 1981, exceed the annual numerical limitation in effect pursuant to this section for such year, the Secretary of State shall reduce to such extent the annual numerical limitation in effect pursuant to this section for the following fiscal year.

[(b) The "immediate relatives" referred to in subsection (a) of this section shall mean the children, spouses, and parents of a citizen of the United States: *Provided*, That in the case of parents, such citizen must be at least twenty-one years of age. The immediate relatives specified in this subsection who are otherwise qualified for admission as immigrants shall be submitted as such, without regard to the numerical limitations in this Act.]

WORLDWIDE LEVEL OF IMMIGRATION

SEC. 201. (a) IN GENERAL.—Exclusive of aliens described in subsection (b), aliens born in a foreign state or dependent area who may be issued immigrant visas or who may otherwise acquire the status of an alien lawfully admitted to the United States for permanent residence are limited to—

(1) family connection immigrants described in section 203(a) (or who are admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent under section 203(a)) in a number not to exceed in any fiscal year the number specified in subsection (c) for that year, and not to exceed in any of the first 3 quarters of any fiscal year 27 percent of the worldwide level under such subsection for all of such fiscal year; and

(2) independent immigrants described in section 203(b) (or who are admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent under section 203(b)), in a number not to exceed in any fiscal year the number specified in subsection (d) for that year, and not to exceed in

any of the first 3 quarters of any fiscal year 27 percent of the worldwide level under such subsection for all of such fiscal year.

(b) ALIENS NOT SUBJECT TO DIRECT NUMERICAL LIMITATIONS.—The following aliens are not subject to the worldwide levels or numerical limitations of subsection (a):

(1)(A) Special immigrants described in subparagraph (A) or (B) of section 101(a)(27).

(B) Aliens who are admitted under section 207(c) pursuant to a numerical limitation established under section 207(b).

(C) Aliens whose status is adjusted to permanent residence under section 210, 210A, or 245A.

(D) Aliens provided permanent resident status under section 249.

(2)(A)(i) Aliens who are immediate relatives. For purposes of this clause, the term "immediate relatives" means the children, spouses, and parents of a citizen of the United States, except that, in the case of parents, such citizens shall be at least 21 years of age.

(ii) Aliens admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent who is such an immediate relative.

(B) Aliens born to an alien lawfully admitted for permanent resident during a temporary visit abroad.

(C) Aliens who are admitted under section 207(c) pursuant to a numerical limitation established under section 207(a) and aliens who are granted asylum under section 208.

(c) WORLDWIDE LEVEL OF FAMILY CONNECTION IMMIGRANTS.—(1) The worldwide level of family connection immigrants under this subsection for a fiscal year is equal to—

(A) $480,000 minus

(B) the number computer under paragraph (2), plus

(C) the number (if any) computed under paragraph (3).

(2) The number computed under this paragraph for a fiscal year is the sum of the number of aliens described in subparagraph (A) and (B) of subsection (b)(2) who were issued immigrant visas or otherwise acquired the status of aliens lawfully admitted to the United States for permanent residence in the previous fiscal year.

(3) The number computed under this paragraph for a fiscal year (beginning with fiscal year 1992) is the difference (if any) between the maximum number of visas which may be issued under subsection (a)(2) (relating to independent immigrants) during the previous fiscal year and the number of visas issued under that subsection during the year.

(d) WORLDWIDE LEVEL OF INDEPENDENT IMMIGRANTS.—(1) The worldwide level on independent immigrants under this subsection for a fiscal year is equal to—

(A) $120,000 plus

(B) the number computed under paragraph (2).

(2) The number computed under this paragraph for a fiscal year (beginning with fiscal year 1992) is the difference (if any) between the maximum number of visas which may be issued under subsection (a)(1) (relating to family connection immigrants) during the pre-

vious fiscal year and the number of visas issued under that subsection during that year.

(e) REPORT ON, AND REVISION OF, WORLDWIDE LEVEL OF IMMIGRATION.—(1) In January before the beginning of fiscal year 1993 (and before each succeeding fiscal year thereafter), the Attorney General, in consultation with the Secretary of Labor, the Secretary of State, the Secretary of Health and Human Services, the Administrator of the Environmental Protection Administration, and the Secretary of Housing and Urban Development, shall prepare and transmit to the President and to the Judiciary Committees of the Senate and of the House of Representatives a report discussing the effect of immigration on the United States. The report shall consider—

(A) the requirements of citizens of the United States and of aliens lawfully admitted for permanent residence to be joined in the United States by immediate family members;

(B) the impact of immigration on labor needs, employment, and other economic and domestic conditions in the United States;

(C) the impact of immigration with respect to demographic and fertility rates and resources and environmental factors; and

(D) the impact of immigration on the foreign policy and national security interests of the United States.

The report for fiscal year 1994 (and each third fiscal year thereafter) shall include a discussion, based upon such consideration, of the need (if any) to revise the number specified in subsection (c)(1)(A) or the number specified in subsection (d)(1)(A) for the 3-fiscal year period beginning with the first fiscal year following transmittal of the report. Beginning with fiscal year 1993, and every three fiscal years thereafter, the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives shall hold hearings on the findings of the latest such report.

(2) In March before the beginning of fiscal year 1994 (and of each third fiscal year thereafter), the President shall, after considering the corresponding report transmitted under paragraph (1) and after soliciting the views of members of the Committees on the Judiciary of the House of Representatives and of the Senate, determine whether or not the number specified in subsection (C)(1)(A) or the number specified in subsection (d)(1)(A) should be changed for the 3-fiscal year period beginning with the next following fiscal year, and, if so, which number should apply instead of the number specified in the respective subsection for the fiscal years of that period. The President shall transmit such determination to the Congress by not later than March 31 before the fiscal year involved and shall deliver such determination to both Houses of Congress on the same day and while each House is in session.

(3)(A) Notwithstanding the provisions of subsections (c)(1)(A) and (d)(1)(A), if the number transmitted in a determination of the President with respect to subsection (C)(1)(A) or subsection (d)(1)(A) for the fiscal years of a 3-fiscal year period—

(i) is not less than 95 percent, nor more than 105 percent, of the number specified in that respective subsection, unless the Congress by not later than August 31 following the date of the transmittal, enacts a joint resolution the substance of which disapproves the change with repsect to the number for that re-

spective subsection for the fiscal years of that 3-fiscal year period, the number so transmitted shall take effect and apply, instead of the number specified in that respective subsection, during that period; and

(ii) is less than 95 percent, or more than 105 percent, of the number specified in that respective subsection, if the Congress, by not later than August 31 following the date of the transmittal, enacts a joint resolution that substance of which approves the change with respect to the number specified in that respective subsection for the fiscal years of that 3-year period, the number so transmitted shall take effect and apply, instead of the number specified in that respective subsection, during that period.

(B) For purposes of this paragraph, a number transmitted by the President under paragraph (2) which takes effect and applies under this paragraph with respect to subsection (c)(1)(A) or (d)(1)(A) with respect to a fiscal year or fiscal years shall be deemed to be the number specified in that same subsection for that period, except that the number for the latest fiscal year shall be deemed to be the number specified in that same subsection thereafter unless changed pursuant to this subsection.

(4) Paragraphs (5), (6), and (7) are enacted—

(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each respective House, but applicable only with respect to the procedure to be followed in the case of joint resolutions described in paragraph (5), and supersede the other rules only to the extent that such paragraphs are inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change such rules at any time, in the same manner and to the same extent as in the case of any other rule of that House.

(5) For purposes of this subsection, the term "joint resolution", with respect to a change in number transmitted by the President under paragraph (2) for a fiscal year or years, in the case described—

(A) in paragraph (3)(A), means only a joint resolution of the Congress, the matter after the resolving clause of which is as follows: "That Congress, pursuant to subsection (e)(3)(A) of section 201 of the Immigration and Nationality Act, disapproves the change proposed by the President in the number specified under subsection of that section for fiscal year (or years) transmitted to the Congress by the President on ", the blank spaces therein to be filled appropriatedly; or

(B) in paragraph (3)(B), means only a joint resolution of the Congress, the matter after the resolving clause of which is as follows: "That Congress, pursuant to subsection (e)(3)(B) of section 201 of the Immigration and Nationality Act, approves the change proposed by the President in the number specified under subsection of that section for fiscal years (or years) transmitted to the Congress by the President on ", the blank spaces therein to be filled appropriately.

(6)(A) No later than the first day of session following the day on which a determination is transmitted to the House of Representatives and to the Senate under paragraph (2), which determination provides for a change in a number specified in subsection (c)(1)(A) or (d)(1)(A) for a fiscal year, a joint resolution (as defined in paragraph (5)) with respect to each such change shall be introduced (by request) in each House by the chairman of the Committee on the Judiciary of that House, or by a Member or Members of the House designated by such chairman.

(B)(i) Each joint resolution introduced in a House shall be referred to the Committee on the Judiciary of the respective House. The committees shall make their recommendations to the respective House not later than June 15 following the date of introduction.

(ii) If the Committee has not reported such a joint resolution with respect to a change by such date, it is in order to move to discharge the Committee from further consideration of the joint resolution, except that no motion to discharge shall be in order after the Committee has reported a joint resolution with respect to the same change.

(iii) A motion to discharge under clause (ii) may be made only by a Member favoring the joint resolution, is privileged, and debate thereon shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the joint resolution, the time to be divided equally between, and controlled by, in the Senate by the majority leader and the minority leader or their designees and in the House of Representatives by the chairman of the Committee on the Judiciary and the ranking minority member of such committee or their designees. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(C)(i) When the Committee has reported, or been discharged from consideration of, a joint resolution, a motion to proceed to the consideration of the joint resolution shall be highly privileged and is not debatable. The motion shall not be subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the joint resolution is agreed to, the resolution shall remain the unfinished business of the respective House until disposed of.

(ii) Debate on a joint resolution, and all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, to be equally divided in the Senate between, and controlled by, the majority leader and the minority leader or their designees and to be equally divided in the House of Representatives between individuals following and individuals opposing the joint resolution. A motion further to limit debate and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the resolution is not in order. A motion to reconsider the vote by which a joint resolution is passed or rejected shall not be in order.

(iii) Immediately following the conclusion of the debate on a joint resolution, and a single quorum call at the conclusion of the debate

if requested in accordance with the rules of the appropriate House, the vote on final passage of the joint resolution shall occur.

(iv) Appeals from the decisions of the chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a joint resolution shall be decided without debate.

(D) If, prior to the passage by one House of a joint resolution of that House, that House receives a joint resolution with respect to the same change transmitted by the President in a number specified under a subsection for a fiscal year, then—

(i) the procedure in that House shall be the same as if no resolution had been received from the other House; but

(ii) the vote on final passage shall be on the resolution of the other House.

NUMERICAL LIMITATION TO ANY SINGLE FOREIGN STATE

SEC. 202. [8 U.S.C. 1152] [(a) No person] *(a)(1) Except as specifically provided in paragraph (2) and in section 101(a)(27), 201(b)(2)(A)(i), and 203, no person* shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of his race, sex, nationality, place of birth, or place of residence[, except as specifically provided in section 101(a)(27), section 201(b) *201(b)(2)(A)(i)*, and section 203. *Provided,* That the total number of immigrant visas made available to natives of any single foreign state under paragraphs (1) through (7) of section 203(a) shall not exceed 20,000 in any fiscal year. *And provided further,* That to the extent that in a particular fiscal year the number of such natives who are issued immigrant visas or who may otherwise acquire the status of aliens lawfully admitted for permanent residence and who are subject to the numerical limitation of this section, together with the aliens from the same foreign state who adjust their status to aliens lawfully admitted for permanent residence pursuant to subparagraph (H) of section 101(a)(27) or section 19 of the Immigration and Nationality Amendments Act of 1981, exceed the numerical limitation in effect for such year pursuant to this section, the Secretary of State shall reduce to such extent the numerical limitation in effect for the natives of the same foreign state pursuant to this section for the following fiscal year.]

(2)(A) Subject to subparagraphs (B) and (C), the total number of immigrant visas made available to natives of any single foreign state or dependent area under subsection (c) of section 201 (relating to family connection immigrants) in any fiscal year may not exceed 7 percent (in the case of a single foreign state) or 2 percent (in the case of a dependent area) of the total number of such visas made available under such subsection in that fiscal year.

(B) If for fiscal year 1991 or a succeeding fiscal year the number of aliens described in subparagraph (A) or (B) of section 201(b)(2) (relating to immediate relatives and similar individuals) who are natives of a particular foreign state or dependent area and who are issued immigrant visas or otherwise acquired the status of aliens lawfully admitted to the United States for permanent residence in the fiscal year exceeds the greater of—

(i) the numerical level computed under in subparagraph (A) for that state for that fiscal year, or

(ii) the level of such immigration of natives of that foreign state in fiscal year 1989 or fiscal year 1990 (whichever is greater),

then the numerical level applicable to that foreign state or dependent area in the following fiscal year under subparagraph (A) shall be reduced by the amount of such excess, except that such reduction shall not exceed one-half of the numerical level otherwise provided without regard to this subparagraph.

(C) If, because of the application of subparagraph (A) with respect to one or more foreign states, the number of visas available under section 201(c) for a calendar quarter exceeds the number of qualified immigrants who otherwise may be issued such a visa, subparagraph (A) shall not apply to visas made available to such states or areas during the remainder of such calendar quarter.

(3)(A) Subject to subparagraph (B), the total number of immigrant visas made available to natives of any single foreign state or dependent area under subsection (d) of section 201 (relating to independent immigrants) in any fiscal year may not exceed 7 percent (in the case of a single foreign state) or 2 percent (in the case of a dependent area) of the total number of such visas made available under such subsection in the fiscal year.

(B) If, because of the application of subparagraph (A) with respect to one or more foreign states or dependent areas, the number of visas available under section 201(d) for a calendar quarter exceeds the number of qualified immigrants who otherwise may be issued such a visa, subparagraph (A) shall not apply to visas made available to such states or areas during the remainder of such calendar quarter.

(b) Each independent country, self-governing dominion, mandated territory and territory under the international trusteeship system of the United Nations, other than the United States and its outlying possessions, shall be treated as a separate foreign state for the purposes of [the numerical limitation set forth in the proviso to subsection (a) of this section] *a numerical level established under subsection (a)* when approved by the Secretary of State. For the purposes of this Act the foreign state to which an immigrant is chargeable shall be determined by birth within such foreign state except that (1) an alien child, when accompanied by or following to join his alien parent or parents, may be charged to the foreign state of either parent if such parent has received or would be qualified for an immigrant visa, if necessary to prevent the separation of the child from the parent or parents, and if immigration charged to the foreign state to which such parent has been or would be chargeable has not reached [the numerical limitation set forth in the proviso to subsection (a) of this section] *a numerical level established under subsection (a)* for that fiscal year; (2) if an alien is chargeable to a different foreign state from that of his spouse, the foreign state to which such alien is chargeable may, if necessary to prevent the separation of husband and wife, be determined by the foreign state of the spouse he is accompanying or following to join, if such spouse has received or would be qualified for an immigrant visa and if immigration charged to the foreign state to which such spouse has been or would be chargeable has not reached [the nu-

merical limitation set forth in the proviso to subsection (a) of this section] *a numerical level established under subsection (a)* for that fiscal year; (3) an alien born in the United States shall be considered as having been born in the country of which he is a citizen or subject, or, if he is not a citizen or subject of any country, in the last foreign country in which he had his residence as determined by the consular officer; [and] (4) an alien born within any foreign state in which neither of his parents was born and in which neither of his parents had a residence at the time of such alien's birth may be charged to the foreign state of either parent.

(c) Any immigrant born in a colony or other component or dependent area of a foreign state overseas from the foreign state, [other than a special immigrant, as defined in section 101(a)(27), or an immediate relative of a United States citizen, as defined in section 201(b),] *other than an alien described in section 201(b)(2)(A)(i),* shall be chargeable for the purpose of the limitation set forth in [section 202(a), to the foreign state, and the number of immigrant visas available to each such colony or other component or dependent area shall not exceed 5,000 in any fiscal year.] *subsection (a)(1), to the foreign state.*

(d) In the case of any change in the territorial limits of foreign states, the Secretary of State shall, upon recognition of such change, issue appropriate instructions to all diplomatic and consular offices.

[(e) Whenever the maximum number of visas have been made available under section 202 to natives of any single foreign state as defined in subsection (b) of this section or any dependent area as defined in subsection (c) of this section in any fiscal year, in the next following fiscal year a number of visas, not to exceed 20,000, in the case of a foreign state or 600 in the case of a dependent area, shall be made available and allocated as follows:

[(1) Visas shall first be made available, in a number not to exceed 20 per centum of the number specified in this subsection, to qualified immigrants who are the unmarried sons or daughters of citizens of the United States.

[(2) Visas shall next be made available, in a number not to exceed 26 per centum of the number specified in this subsection, plus any visas not required for the classes specified in paragraph (1), to qualified immigrants who are the spouses, unmarried sons, or unmarried daughters of an alien lawfully admitted for permanent residence.

[(3) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in this subsection, to qualified immigrants who are members of the professions, or who because of their exceptional ability in the sciences or the arts will substantially benefit prospectively the national economy, cultural interests, or welfare of the United States, and whose services in the professions, sciences, or arts are sought by an employer in the United States.

[(4) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in this subsection, plus any visas not required for the classes specified in paragraphs (1) through (3), to qualified immigrants who are the

married sons or the married daughters of citizens of the United States.

[(5) Visas shall next be made available, in a number not to exceed 24 per centum of the number specified in this subsection, plus any visas not required for the classes specified in paragraphs (1) through (4), to qualified immigrants who are the brothers or sisters of citizens of the United States, provided such citizens are at least twenty-one years of age.

[(6) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in this subsection, to qualified immigrants capable of performing specified skilled or unskilled labor, not of a temporary or seasonal nature, for which a shortage of employable and willing persons exists in the United States.

[(7) Visas so allocated but not required for the classes specified in paragraphs (1) through (6) shall be made available to other qualified immigrants strictly in the chronological order in which they qualify.]

Whenever the maximum number of visas have been made available under subsection (a) to natives of any single foreign state or to any dependent area, then in the next following fiscal year a number of visas, not to exceed the number specified in subsection (a)(2) for a foreign state or a dependent area, as the case maybe shall be made available and allocated for such state or such area for the same classes of aliens described in, and the same percentages specified in, paragraphs (1) through (4) of section 203(a).

ALLOCATION OF IMMIGRANT VISAS

[SEC. 203. [8 U.S.C. 1153] (a) Aliens who are subject to the numerical limitations specified in section 201(a) shall be alloted visas as follows:

[(1) Visas shall be first made available, in a number not to exceed 20 per centum of the number specified in section 201(a), to qualified immigrants who are the unmarried sons or daughters of citizens of the United States.

[(2) Visas shall next be made available, in a number not to exceed 26 per centum of the number specified in section 201(a), plus any visas not required for the classes specified in paragraph (1), to qualified immigrants who are the spouses, unmarried sons or unmarried daughters of an alien lawfully admitted for permanent residence.

[(3) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in section 201(a), to qualified immigrants who are members of the professions, or who because of their exceptional ability in the sciences or the arts will substantially benefit prospectively the national economy, cultural interests, or welfare of the United States, and whose services in the professions, sciences, or arts are sought by an employer in the United States.

[(4) Visas shall next be made available, in a number not to exceed 24 per centum of the number specified in section 201(a), plus any visas not required for the classes specified in paragraphs

(1) through (3), to qualified immigrants who are the married sons or the married daughters of citizens of the United States.

[(5) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in section 201(a), plus any visas not required for the classes specified in paragraphs (1) through (4), to qualified immigrants who are the brothers or sisters of citizens of the United States, provided such citizens are at least twenty-one years of age.

[(6) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in section 201(a), to qualified immigrants who are capable of performing specified skilled or unskilled labor, not of a temporary or seasonal nature, for which a shortage of employable and willing persons exists in the United States.

[(7) Visas authorized in any fiscal year, less those required for issuance to the classes specified in paragraphs (1) through (6), shall be made available to other qualified immigrants strictly in the chronological order in which they qualify. Waiting lists of applicants shall be maintained in accordance with regulations prescribed by the Secretary of State. No immigrant visa shall be issued to a nonpreference immigrant under this paragraph, or to an immigrant with a preference under paragraph (3) or (6) of this subsection, until the consular officer is in receipt of a determination made by the Secretary of Labor pursuant to the provisions of section 212(a)(14). No immigrant visa shall be issued under this paragraph to an adopted child or prospective adopted child of a Untied States citizen or lawfully resident alien unless (A) a valid home-study has been proposed residence, or by an agency authorized by that State to conduct such a study, or, in the case of a child adopted abroad, by an appropriate public or private adoption agency which is licensed in the United States; and (B) the child has been irrevocably released for immigration and adoption: *Provide,* That no natural parent or prior adoptive parent of any such parentage, be accorded any right, privilege, or status under this Act. No immigrant visa shall otherwise be issued under this paragraph to an unmarried child under the age of sixteen except a child who is accompanying or following to join his natural parent.

[(8) A spouse or child as defined in section 101(b)(1)(A), (B), (C), (D), or (E) shall, if not otherwise entitled to an immigrant status and the immediate issuance of a visa under paragraphs (1) through (7), be entitled to the same status, and the same order of consideration provided in subsection (b), if accompanying, or following to join, his spouse or parent.

[(b) In considering applications for immigrant visas under subsection (a) or consideration shall be given to applicants in the order in which the classes of which they are members are listed in subsection (a).

[(c) Immigrant visas issued pursuant to paragraphs (1) through (6) of subsection (a) shall be issued to eligible immigrants in the order in which a petition in behalf of each such immigrant is filed with the Attorney General as provided in section 204.

[(d) Every immigrant shall be presumed to be a nonpreference immigrant until he establishes to the satisfaction of the consular officer and the immigration officer that he is entitled to a prefer-

ence status under paragraphs (1) through (6) of subsection (a), or to a special immigrants status under section 101(a)(27), or that he is an immediate relative of a United States citizen as specified in section 201(b). In the case of any alien claiming in his application for an immigrant visa to be an immediate relative of a Untied States citzien as specified in section 201(b) or to be entitled to preference immigrant status paragraphs (1) through (6) of subsection (a), the consular officer shall not grant such status until he has been authorized to do so as provided by section 204.

[(e) For the purpose of carrying out his responsibilities in the orderly administration of this section, the Secretary of State is authorized to make reasonable estimates of the anticipated numbers of visas to be issued during any quarter of any fiscal year within each of the categories of subsection (a), and to rely upon such estimates in authorizing the issuance of such visas. The Secretary of State shall terminate the registration of any alien who fails to apply for an immigrant visa within one year following notification to him of the availability of such visa, but the Secretary shall reinstate the registration of any such alien who establishes within two years following notification of the availability of such visa that such failure to apply was due to circumstances beyond his control. Upon such termination the approval of any petition approved pursuant to section 204(b) shall be automatically revoked.]

ALLOCATION OF IMMIGRANT VISA

SEC. 203. (a) PREFERENCE ALLOCATION FOR FAMILY CONNECTION IMMIGRANTS.—Aliens subject to the world-wide level specified in section 201(c) for family connection immigrants shall be allotted visas as follows:

(1) UNMARRIED SONS AND DAUGHTERS OF CITIZENS.—Qualified immigrants who are the unmarried sons or daughters of citizens of the United States shall be allocated visas in a number not to exceed 9 percent of such worldwide level, plus any visas not required for the class specified in paragraph (4).

(2) SPOUSES AND UNMARRIED SONS AND UNMARRIED DAUGHTERS OF PERMANENT RESIDENT ALIENS.—Qualified immigrants who are—

(A) the spouses of aliens lawfully admitted for permanent residence, or

(B) the unmarried sons or unmarried daughters of an alien lawfully admitted for permanent residence, if the sons or daughters—

(i) are under 26 years of age as of the date of the petition for such preference, or

(ii)(I) as of the date of the enactment of the Immigration Act of 1989, had a petition filed on their behalf for preference status under section 203(a)(2) (as in effect on such date) by reason of such relationship and such petition was subsequently approved, and

(II) continue to qualify under the terms of section 203(a)(2) of this Act as in effect on the day before such date, shall be allocated visas in a number not to exceed

57 percent of such worldwide level, plus any visas not required for the class specified in paragraph (1).

(3) MARRIED SONS AND DAUGHTERS OF CITIZENS.—Qualified immigrants who are the married sons or married daughters of citizens of the United States shall be allocated visas in a number not to exceed 9 percent of such worldwide level, plus any visas not required for the classes specified in paragraphs (1) and (2).

(4) BROTHERS AND SISTERS OF CITIZENS.—Qualified immigrants who are the brothers or sisters of citizens of the United States, if such citizens are at least 21 years of age, shall be allocated visas in a number not to exceed 25 percent of such worldwide level, plus any visas not required for the classes specified in paragraphs (2) or (3).

(b) PREFERENCE ALLOCATION FOR INDEPENDENT IMMIGRANTS.—Aliens subject to the worldwide level specified in section 201(d) for independent immigrants in a fiscal year shall be allocated visas as follows:

(1) SPECIAL IMMIGRANTS.—Visas shall be made available, in a number not to exceed 5 percent of such worldwide level, to qualified special immigrants described in section 101(a)(27) (other than those described in subparagraph (A) or (B) thereof).

(2) ALIENS WHO ARE MEMBERS OF THE PROFESSIONS HOLDING ADVANCED DEGREES OR ALIENS OF EXCEPTIONAL ABILITY.—(A) Visas shall be made available next, in a number not to exceed 23 percent of such worldwide level to qualified immigrants who are members of the professions holding advanced degrees or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) The Attorney General may, when he deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

(C) In determining under subparagraph (A) whether an immigrant has exceptional ability, the possession of a degree, diploma, certificate, or similar award from a college, university, school or other institution of learning or a license to practice or certification for a particular profession or occupation shall not by itself be considered sufficient evidence of such exceptional ability.

(3) SKILLED WORKERS.—(A) Visas shall be made available next, in a number not to exceed 23 percent of such worldwide level, to the following two classes of aliens:

(i) Qualified immigrants who are capable, at the time of petitioning, of performing skilled labor (requiring at least 2 years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

(ii) Qualified immigrants who hold bachelor's degrees and who are members of the professions.

(B) An immigrant visa may not be issued to an immigrant under subparagraph (A) until the consular officer is in receipt of a determination made by the Secretary of Labor pursuant to the provisions of section 212(a)(14).

(4) EMPLOYMENT CREATION.—Visas shall be made available next, in a number not to exceed 4 percent of such worldwide level, to any qualified immigrant who is seeking to enter the United States for the purpose of engaging in a new commercial enterprise which the alien has established and in which such alien has invested or, is actively in the process of investing, capital, in an amount not less than $1,000,000, and which will benefit the United States economy and create fulltime employment for not fewer than 10 United States citizens or aliens lawfully admitted for permanent residence (other than the spouse, sons, or daughters of such immigrant). The Attorney General, in consultation which the Secretary of Labor and the Secretary of State, may prescribe regulations increasing the dollar amount of the investment necessary for the issuance of a visa under this paragraph.

(5) SELECTED IMMIGRANTS.—(A) Visas authorized in any fiscal year under section 201(d), less those required for issuance to the classes specified in paragraphs (1), (2), (3), and (4), shall be made available to qualified immigrants who attain a score of not less than 45 points based on the point assessment system described in subparagraph (B).

(B) The point assessment system referred to in subparagraph (A) shall accord points based on criteria as follows:

(i) AGE (10 POINTS).—For an alien who (as of the first day of the fiscal year involved) is—

(I) not less than 21 years of age or more than 35 years of age, 10 points; or

(II) not less than 36 years of age or more than 44 years of age, 5 points.

(ii) EDUCATION (25 POINTS).—For an alien who (as of the first day of the first year involved)—

(I) has completed successfully grade school through high school or its educational equivalent (as determined by the Secretary of Education), 10 points;

(II) has been awarded a bachelor's degree or its equivalent (as determined by the Secretary of Education), 10 additional points; and

(III) has been awarded a graduate degree, an additional number of points (up to 5 additional points) to be determined by the Secretary of Education based on the level of the degree.

(iii) OCCUPATIONAL DEMAND (20 POINTS).—For an alien who is in an occupation for which the Secretary of Labor determines (before the fiscal year involved)—

(I) there will be increased demand in the United States for individuals in the occupation in the succeeding fiscal year, 10 points, and

(II) there is at present or there will be a future shortage of individuals in the United States to meet the

need in the occupation in the United States in the succeeding fiscal year, 5 or 10 points.

(iv) OCCUPATIONAL TRAINING AND WORK EXPERIENCE (20 POINTS).—To the extent the alien has training, work experience, or both, in the occupation described in clause (iv), 10 or 20 points, such points multiplied by the number of points awarded under clause (iv) divided by 20.

(C) The point assessment system described in subparagraph (B) shall be established by regulation by the Secretary of State in consultation with the Attorney General, the Secretary of Labor, and the Secretary of Education.

(c) TREATMENT OF FAMILY MEMBERS.—A spouse or child as defined in subparagraph (A), (B), (C), (D), or (E) of section 101(b)(1) shall, if not otherwise entitled to an immigrant status and the immediate issuance of a visa under subsection (a) or (b) (except for subsection (b)(5)) be entitled to the same status, and the same order of consideration provided in the respective subsection, if accompanying or following to join, his spouse or parent.

(d) ORDER OF CONSIDERATION.—(1) Immigrant visas made available under subsection (a) or (b) (other than paragraph (5)) or under section 201(a)(3) shall be issued to eligible immigrants in the order in which a petition in behalf of each such immigrant is filed with the Attorney General (or in the case of special immigrants under section 101(a)(27)(D), with the Secretary of State) as provided in section 204(a).

(2) Of the immigrant visa numbers made available under subsection (b)(5) (relating to selected immigrants) in a fiscal year—

(A) 20 percent of such numbers shall be issued to eligible qualified immigrants who attain a score of at least 85 points on the assessment system described in subsection (b)(5)(B) with respect to petitions filed for the fiscal year involved, to be chosen in the random order described in clause (B); and

(B) 80 percent of such numbers shall be issued to eligible qualified immigrants with a qualifying score on such system strictly in a random order established by the Secretary of State for the fiscal year involved.

(3) Waiting lists of applicants for visas under this section shall be maintained in accordance with regulations prescribed by the Secretary of State.

(e) PRESUMPTION.—Every immigrant shall be presumed not to be described in subsection (a) or (b) of this section, section 101(a)(27), or section 201(b)(2), until the immigrant establishes to the satisfaction of the consular officer and the immigration officer that the immigrant is so described. In the case of any alien claiming in his application for an immigrant visa to be described in section 201(b)(1) or in subsection (a) or (b) of this section, the consular officer shall not grant such status until he has been authorized to do so as provided by section 204.

(f) LISTS.—For purposes of carrying out his responsibilities in the orderly administration of this section, the Secretary of State may make reasonable estimates of the anticipated numbers of visas to be issued during any quarter of any fiscal year within each of the categories under subsections (a) and (b), and to rely upon such estimates in authorizing the issuance of visas. The Secretary of State shall

terminate the registration of any alien who fails to apply for an immigrant visa within one year following notification to him of his availability of such visa, but the Secretary shall reinstate the registration of any such alien who establishes within 2 years following the date of notification of the availability of such vias that such failure to apply was due to circumstances beyond his control.

PROCEDURE FOR GRANTING IMMIGRANT STATUS

SEC. 204. [8 U.S.C. 1154] [(a)(1) Any citizen of the United States claiming that an alien is entitled to a preference status by reason of a relationship described in paragraph (1), (4), or (5) of section 203(a), or to an immediate relative status under section 201(b), or any alien lawfully admitted for permanent residence claiming that an alien is entitled to a preference status by reason of the relationship described in section 203(a)(2), or any alien desiring to be classified as a preference immigrant under section 203(a)(3) (or any person on behalf of such an alien), or any person desiring and intending to employ within the United States an alien entitled to classification as a preference immigrant under section 203(a)(6), may file a petition with the Attorney General for such classification. The petition shall be in such form as the Attorney General may by regulations prescribe and shall contain such information and be supported by such documentary evidence as the Attorney General may require. The petition shall be made under oath administered in the United States, but, if executed outside the United States, administered by a consular officer or an immigration officer.] *(a)(1)(A) Any citizen of the United States claiming that an alien is entitled to classificaton by reason of a relationship described in paragraph (1), (3), or (4) of section 203(a) or to an immediate relative status under section 201(b)(2)(A)(i) may file a petition with the Attorney General for such classification.*

(B) Any alien lawfully admitted for permanent residence claiming that an alien is entitled to a classification by reason of the relationship described in section 203(a)(2) may file a petition with the Attorney General for such classification. An alien may be classified as an alien described in paragraphs (2), (3), or (4) of section 203(a) with respect to a specific fiscal year on the basis of a petition filed in a previous fiscal year only if the alien has filed with the Attorney General a notice of continuing intent to be admitted to the United States as an immigrant under such section within the 2 fiscal years immediately previous to the specific fiscal year involved.

(C)(i) Any alien (other than a special immigrant under section 101(a)(27)(D)) desiring to be classified under section 203(b)(1) (or any person on behalf of such an alien) (relating to special immigrants) may file a petition with the Attorney General for such classification.

(ii) Aliens claiming status as a special immigrant under section 101(a)(27)(D) may file a petition only with the Secretary of State and only after notification by the Secretary that such status has been recommended and approved pursuant to such section.

(D) Any alien desiring to be classified under section 203(b)(2) (or any person on behalf of such an alien) (relating to professionals)

may file a petition with the Attorney General for such classification.

(E) Any person desiring and intending to employ within the United States an alien entitled to classification under paragraph (2) or (3) of section 203(b) (relating to professionals and skilled workers) may file a petition with the Attorney General for such classification.

(F) Any alien desiring to be classified under section 203(b)(4) (relating to employment creation) may file a petition with the Secretary of State for such classification.

(G)(i) Any alien desiring to be provided an immigrant visa under section 203(b)(5) (relating to selected immigrants) may file a petition at the place and time determined by the Secretary of State by regulation. While the place of filing may be designated inside the United States, the petitioner shall be physically outside the United States when submitting the petition. Only one such petition may be filed by an alien with respect to any petitioning period established. If more than one petition is submitted all such petitions submitted for such period by the alien shall be voided.

(ii)(I) The Secretary of State may designate a period for the filing of petitions with respect to visas which may be issued under section 203(b)(5) during either of the next two fiscal years beginning after the close of such period.

(II) Aliens who qualify, through random selection, for a visa under section 203(b)(5) shall remain eligible to receive such visa only through the end of the specific fiscal year for which they were selected.

(III) The Secretary of state shall prescribe such regulations as may be necessary to carry out this clause.

(iii) A petition or registration under this subparagraph shall be in such form as the Secretary of State may by regulation prescribe and shall contain such information and be supported by such documenttary evidence as the Secretary of State may require.

(iv) The petition under this subparagraph shall include a certification in writing at the time of filing a petition that all information contained within the petition is true and correct to the best of the petitioner's knowledge and that any willful misrepresentation of the facts or statements included in the petition shall be deemed a violation of section 212(a)(19).

(v) On or after October 1, 1990, an alien who—

(A) Previous to being admitted as, or otherwise provided the status of, an alien lawfully admitted for permanent residence was married to an individual, and

(B) is so admitted, or provided such status, as a child or as the unmarried son or unmarried daughter of a citizen of the United States or of an alien lawfully admitted for permanent residence,

may not file a petition under this section on behalf of any alien to whom the alien was married previous to being so admitted or provided such status.

[*(2)***]***(5)*(A) The Attorney General may not approve a spousal second preference petition filed by an alien who, by virtue of a prior marriage, had been accorded the status of an alien lawfully admitted for permanent residence as the spouse of a citizen of the

United States or as the spouse of an alien lawfully admitted for permanent residence, unless—

(i) a period of 5 years has elapsed after the date the alien acquired the status of an alien lawfully admitted for permanent residence, or

(ii) the alien establishes to the satisfaction of the Attorney General by clear and convincing evidence that the prior marriage (on the basis of which the alien obtained the status of an alien lawfully admitted for permanent residence) was not entered into for the purpose of evading any provision of the immigration laws.

* * * * * * *

(b) After an investigation of the facts in each cae, and after consultation with the Secretary of Labor with respect to petitions to accord a status under section [203(a) (3) or (6),] *section 203(b)(3),* the Attorney General shall, if he determines that the facts stated in the petition are true and that the alien in behalf of whom the petition is made is an immediate relative specified in [section 201(b)] *section 201(b)(2)(A)(i)* or is eligible for [a preference status under section 203(a),] *preference under subsection (a), or (b) of section 203* approve the petition *(and, in the case described in section 203(b)(5), specify the point score on the assessment system)* and forward one copy thereof to the Department of State. [The Secretary of State] *Subject to section 203(b)(5), the Secretary of State* shall then authorize the consular officer concerned to grant the preference status.

* * * * * * *

(e) Nothing in this section shall be construed to entitle an immigrant, in behalf of whom a petition under this section is approved, to enter the United States as a [preference immigrant under section 203(a)] *immigrant under subsection (a), (b), or (c) of section 203* of as an immediate relative under [section 201(b)] *Section 201(f)* if upon his arrival at a port of entry in the United States he is found not to be entitled to such classification.

[(f) the provisions of this section shall be applicable to qualified immigrants specified in paragraphs (1) through (6) of section 202(e).]

[(g)](*f*)(1) Any alien claiming to be an alien described in paragraph (2)(A) of this subsection (or any person on behalf of such an alien) may file a petition with the Attorney General for classification under section 201(b), 203(a)(1), or 203(a)(4) *(as in effect before the date of the enactment of the Immigration Act of 1989)*, as appropriate. After an investigation of the facts of each case the Attorney General shall, if the conditions described in paragraph (2) are met, approve the petition and forward one copy to the Secretary of State.

* * * * * * *

[(h)](*g*) Notwithstanding subsection (a), a petition may not be approved to grant an alien immediate relative status of [preference status] *status under section 203(a)(2)* described in section

245(e)(2), until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

* * * * * * *

GENERAL CLASSES OF ALIENS INELIGIBLE TO RECEIVE VISAS AND EXCLUDED FROM ADMISSION; WAIVERS OR INADMISSIBILITY

SEC. 212. [8 U.S.C. 1182] (a) Except as otherwise provided in this Act, the following classes of aliens shall be ineligible to receive visas and shall be excluded from admission into the United States:

(1) * * *

* * * * * * *

[(14) Aliens seeking to enter the United States, for the purpose of performing skilled or unskilled labor, unless the Secretary of Labor has determined and certified [39] to the Secretary of State and the Attorney General that (A) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of aliens who are members of the teaching profession or who have exceptional ability in the sciences or the arts), and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and (B) the employment of such aliens will not adversely affect the wages and working conditions of the workers in the United States similarly employed. The exclusion of aliens under this paragraph shall apply to preference immigrant aliens described in section 203(a) (3) and (6), and to nonpreference immigrant aliens described in section 203(a)(7);]

(14) Aliens seeking to enter the United States to perform skilled labor unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that (A) there are not sufficient qualified workers (or equally qualified workers in the case of aliens who are members of the teaching profession or who have exceptional ability in the sciences or arts) available in the United States in the positions in which the aliens will be employed; and (B) the employment of aliens in such positions will not adversely affect the wages and working conditions of workers in the United States. The Secretary of Labor may, in his discretion, substitute for the determination and certification described by the preceding sentence a determination and certification that there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of aliens who are members of the teaching profession or who have exceptional ability in the sciences or the arts), and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled labor. In making either determination under this paragraph, the Secretary of Labor may use labor market information without regard to the specific job opportunity for which certification is requested, but if such determination is adverse, the Secretary of Labor shall make a certification with regard to the specific job opportunity if the employer submits evidence that such specific certification would result in a different determination. An alien on behalf of whom a certification is sought must have an offer of employment from an employer in the United States. The exclusion of aliens

under this paragraph shall apply to immigrants seeking admission under paragraph (2) or (3) of section 203(b), except that this paragraph shall not apply to any alien for whom a waiver has been granted under section 203(b)(2)(B),

* * * * * * *

(32) Aliens who are graduates of a medical school not accredited by a body or bodies approved for the purposes by the Commissioner of Education (regardless of whether such school of medicine is in the United States) and are coming to the United States principally to perform services as members of the medical profession, except such aliens who have passed parts I and II of the National Board of Medical Examiners Examination (or an equivalent examination as determined by the Secretary of Health, Education, and Welfare) and who are competent in oral and written English. The exclusion of aliens under this paragraph shall apply to preference immigrant aliens described in section [203(a) (3) and (6) and to nonpreference immigrant aliens described in section 203(a)(7).] *203(b) (2), (3), and (5).* For the purposes of this paragraph, an alien who is a graduate of a medicial school shall be considered to have passed parts I and II of the National Board of Medical Examiners examination if the alien was fully and permanently licensed to practice medicine in a State on January 9, 1978, and was practicing medicine in a State of that date:

* * * * * * *

CONDITIONAL PERMANENT RESIDENT STATUS FOR CERTAIN ALIEN SPOUSES AND SONS AND DAUGHTERS

SEC. 216 [8 U.S.C. 1186a] (a) * * *

* * * * * * *

(g) DEFINITIONS.—In this section:

(1) The term "alien spouse" means an alien who obtains the status of an alien lawfully admitted for permanent residence (whether on a conditional basis or otherwise)—

(A) as an immediate relative (described in section [201(b)] *201(b)(2)(A)(i)* as the spouse of a citizen of the United States.

* * * * * * *

VISA WAIVER PILOT PROGRAM FOR CERTAIN VISITORS

SEC. 217 [8 U.S.C. 1187] (a) * * *

CONDITIONAL PERMANENT RESIDENT STATUS FOR CERTAIN ALIEN ENTREPRENEURS, SPOUSES, AND CHILDREN

SEC. 218. (a) IN GENERAL.—

(1) CONDITIONAL BASIS FOR STATUS.—Notwithstanding any other provision of this Act, an alien entrepreneur (as defined in subsection (f)(1)), spouse, and child (as defined in subsection (f)(2)) shall be considered, at the time of obtaining the status of an alien lawfully admitted for permanent residence, to have obtained such status on a conditional basis subject to the provisions of this section.

(2) NOTICE OF REQUIREMENTS—

(A) AT TIME OF OBTAINING PERMANENT RESIDENCE.—At the time an alien entrepreneur, spouse, or child obtains permanent resident status on a conditional basis under paragraph (1), the Attorney General shall provide for notice to such an entrepreneur, spouse, or child respecting the provisions of this section and the requirements of subsection (c)(1) to have the conditional basis of such status removed.

(B) AT TIME OF REQUIRED PETITION.—In addition, the Attorney General shall attempt to provide notice to such an entrepreneur, spouse, or child, at or about the beginning of the 90-day period described in subsection (d)(2)(A), of the requirements of subsection (c)(1).

(C) EFFECT OF FAILURE TO PROVIDE NOTICE.—The failure of the Attorney General to provide a notice under this paragraph shall not affect the enforcement of the provisions of this section with respect to such an entrepreneur, spouse, or child.

(b) TERMINATION OF STATUS IF FINDING THAT QUALIFYING ENTREPRENEURSHIP IMPROPER.—

(1) IN GENERAL.—In the case of an alien with permanent resident status on a conditional basis under subsection (a), if the Attorney General determines, before the second anniversary of the alien's obtaining the status of lawful admission for permanent residence, that—

(A) the establishment of the commercial enterprise was intended solely as a means of evading the immigration laws of the United States;

(B)(i) a commercial enterprise was not established by the alien;

(ii) the alien did not invest or was not actively in the process of investing the requisite capital; or

(iii) the alien was not sustaining the actions described in clause (A) or (B) throughout the period of the alien's residence in the United States; or

(C) the alien was otherwise not conforming to the requirements of section 203(b)(4),

then the Attorney General shall so notify the alien involved and, subject to paragraph (2) shall terminate the permanent resident status of the alien involved as of the date of the determination.

(2) HEARING IN DEPORTATION PROCEEDING.—Any alien whose permanent resident status is terminated under paragraph (1) may request a review of such determination in a proceeding to deport the alien. In such proceeding, the burden of proof shall be on the Attorney General to establish, by a preponderance of the evidence, that a condition described in paragraph (1) is met.

(c) REQUIREMENTS OF TIMELY PETITION AND INTERVIEW FOR REMOVAL OF CONDITION.—

(1) IN GENERAL.—In order for the conditional basis established under subsection (a) for an alien entrepreneur, spouse, or child to be removed—

(A) the alien entrepreneur must submit to the Attorney General, during the period described in subsection (d)(2), a

petition which requests the removal of such conditional basis and which states, under penalty of perjury, the facts and information described in subsection (d)(1), and

(B) in accordance with subsection (d)(3), the alien entrepreneur must appear for a personal interview before an officer or employee of the Service respecting the facts and information described in subsection (d)(1).

(2) TERMINATION OF PERMANENT RESIDENT STATUS FOR FAILURE TO FILE PETITION OR HAVE PERSONAL INTERVIEW.—

(A) IN GENERAL.—In the case of an alien with permanent resident status on a conditional basis under subsection (a), if—

(i) no petition is filed with respect to the alien in accordance with the provisions of paragraph (1)(A), or

(ii) unless there is good cause shown, the alien entrepreneur fails to appear at the interview described in paragraph (1)(B),

the Attorney General shall terminate the permanent resident status of the alien as of the second anniversary of the alien's lawful admission for permanent residence.

(B) HEARING IN DEPORTATION PROCEEDING.—In any deportation proceeding with respect to an alien whose permanent resident status is terminated under subparagraph (A), the burden of proof shall be on the alien to establish compliance with the conditions of paragraphs (1)(A) and (1)(B).

(3) DETERMINATION AFTER PETITION AND INTERVIEW.—

(A) IN GENERAL.—If—

(i) a petition is filed in accordance with the provisions of paragraph (1)(A), and

(ii) the alien entrepreneur appears at the interview described in paragraph (1)(B),

the Attorney General shall make a determination, within 90-days of the date of the interview, as to whether the facts and information described in subsection (d)(1) and alleged in the petition are true with respect to the qualifying commercial enterprise.

(B) REMOVAL OF CONDITIONAL BASIS IF FAVORABLE DETERMINATION.—If the Attorney General determines that such facts and and information are true, the Attorney General shall so notify the alien involved and shall remove the conditional basis of the alien's status effective as of the second anniversary of the alien's obtaining the status of lawful admission for permanent residence.

(C) TERMINATION IF ADVERSE DETERMINATION.—If the Attorney General determines that such facts and information are not true, the Attorney General shall so notify the alien involved and, subject to subparagraph (D), shall terminate the permanent resident status of an alien entrepreneur, spouse, or child as of the date of the determination.

(D) HEARING IN DEPORTATION PROCEEDING.—Any alien whose permanent resident status is terminated under subparagraph (C) may request a review of such determination in a proceeding to deport the alien. In such proceeding, the

burden of proof shall be on the Attorney General to establish, by a preponderance of the evidence, that the facts and information described in subsection (d)(1) and alleged in the petition are not true with respect to the qualifying commercial enterprise.

(d) DETAILS OF PETITION AND INTERVIEW.—

(1) CONTENTS OF PETITION.—Each petition under subsection (c)(1)(A) shall contain facts and information demonstrating that—

(A) a commercial enterprise was established by the alien;

(B) the alien invested or was actively in the process of investing the requisite capital; and

(C) the alien sustained the actions described in clauses (A) and (B) throughout the period of the alien's residence in the United States.

(2) PERIOD FOR FILING PETITION.—

(A) 90 DAY PERIOD BEFORE SECOND ANNIVERSARY.—Except as provided in subparagraph (B), the petition under subsection (c)(1)(A) must be filed during the 90-day period before the second anniversary of the alien's obtaining the status of lawful admission for permanent residence.

(B) DATE PETITIONS FOR GOOD CAUSE.—Such a petition may be considered if filed after such date, but only if the alien establishes to the satisfaction of the Attorney General good cause and extenuating circumstances for failure to file the petition during the period described in subparagraph (A).

(C) FILING OF PETITIONS DURING DEPORTATION.—In the case of an alien who is the subject of deportation hearings as a result of failure to file a petition on a timely basis in accordance with subparagraph (A), the Attorney General may stay such deportation proceedings against an alien pending the filing of the petition under subparagraph (B).

(3) PERSONAL INTERVIEW.—The interview under subsection (c)(1)(B) shall be conducted within 90 days after the date of submitting a petition under subsection (c)(1)(A) and at a local office of the Service, designated by the Attorney General, which is convenient to the parties involved. The Attorney General, in the Attorney General's discretion, may waive the deadline for such an interview or the requirement for such an interview in such case as may be appropriate.

(e) TREATMENT OF PERIOD FOR PURPOSE OF NATURALIZATION.—For purposes of title III, in the case of an alien who is in the United States as a lawful permanent resident on a conditional basis under this section, the alien shall be considered to have been admitted as an alien lawfully admitted for permanent residence and to be in the United States as an alien lawfully admitted to the United States for permanent residence.

(f) DEFINITIONS.—In this section:

(1) The term "alien entrepreneur" means an alien who obtains the status of an alien lawfully admitted for permanent residence (whether on a conditional basis or otherwise) under section 203(b)(4).

(2) The term "spouse" and the term "child" mean an alien who obtains the status of an alien lawfully admitted for permanent residence (whether on a conditional basis or otherwise) by virtue of being the spouse or child, respectively, or an alien entrepreneur.

* * * * * * *

APPLICATIONS FOR VISAS

SEC. 222. [8 U.S.C. 1202] (a) Every alien applying for an immigrant visa and for alien registration shall make application therefor in such form and manner and at such place as shall be by regulations prescribed. In the application the immigrant shall state his full and true name, and any other name which he has used or by which he has been known; age and sex; the date and place of his birth; present address and places of previous residence; whether married or single, and the names and places of residence of spouse and children, if any; calling or occupation; personal description (including height, complexion, color of hair and eyes, and marks of identification); languages he can speak, read, or write; names and addresses of parents, and if neither parent living, then the name and address of his next of kin in the country from which he comes; port of entry into the United States; final destination, if any, beyond the port of entry; whether he has a ticket through to such final destination; whether going to join a relative or friend, and, if so, the name and complete address of such relative or friend; the purpose for which he is going to the United States; whether or not he intends to remain in the United States permanently; whether he was ever arrested, convicted or was ever in prison or almshouse; whether he has ever been the beneficiary of a pardon or an amnesty; whether he has ever been the beneficiary of a pardon or an amnesty; whether he has ever been treated in an institution or hospital or other place for insanity or other mental disease; if he claims to be an immediate relative within the meaning of section [201(b)] *210(b)(2)(A)(i)* or a preference or special immigrant, the facts on which he bases such claim; whether or not he is a member of any class of individuals excluded from admission into the United States, or whether he claims to be exempt from exclusion under the immigration laws; and such additional information necessary to the identification of the applicant and the enforcement of the immigration and nationality laws as may be by regulations prescribed.

* * * * * * *

CHAPTER 5—DEPORTATION; ADJUSTMENT OF STATUS

GENERAL CLASSES OF DEPORTABLE ALIENS

SEC. 241. [8 U.S.C. 1251] (a) * * *

* * * * * * *

(9)(A) was admitted as a nonimmigrant and failed to maintain the nonimmigrant status in which he was admitted or to which it was changed pursuant to section 248, or to comply with the conditions of any such status, (B) or is an alien with permanent resident

status on a conditional basis under section 216 and has such status terminated under such section [;], *or (C) is an alien with permanent resident status on a conditional basis under section 218 and has such status terminated under such section;*

* * * * * * *

SUSPENSION OF DEPORTATION; VOLUNTARY DEPARTURE

SEC. 244. [8 U.S.C. 1254] (a) * * *

* * * * * * *

(d) Upon the cancellation of deportation in the case of any alien under this section, the Attorney General shall record the alien's lawful admission for permanent residence as of the date of the cancellation of deportation of such alien is made, and unless the alien is an immediate relative within the meaning of section [201(b)] *201(b)(2)(A)(i)* the Secretary of State shall reduce by one the number of immigrant visas authorized to be issued under section [201(a) or 202(a)] *201(c) or 202(a)(2)(A)* for the fiscal year then current.

* * * * * * *

ADJUSTMENT OF STATUS OF NONIMMIGRANT TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

SEC. 245. [U.S.C. 1255] (a) * * *

(b) Upon the approval of an application for adjustment made under subsection (a), the Attorney General shall record the alien's lawful admission for permanent residence as of the date the order of the Attorney General approving the application for the adjustment of status is made, and the Secretary of State shall reduce by one the number of the preference or nonpreference visas authorized to be issued under sections 202(e) of [203(a)] *203* within the class to which the alien is chargeable for the fiscal year then current.

(c) Subsection (a) shall not be applicable to (1) an alien crewman; (2) an alien (other than an immediate relative as defined in section [201(b)] *201(b)(2)(A)(i)* or a special immigrant described in section 101(a)(27)(H)) who hereafter continues in or accepts unauthorized employment prior to filing an application for adjustment of status or who is not in legal immigration status on the date of filing the application for adjustment of status or who has failed (other than through no fault of his own for technical reasons) to maintain continously a legal status since entry into the United States, or (3) any alien admitted in transit without visa under section 212(d)(4)(C); or [(5)] *(4)* an alien (other than an immediate relative as defined in section [201(b)] *201(b)(2)(A)(i)* who was admitted an a nonimmigrant visitor without a visa under section 212(l) or section 217 [.], *or (5) an alien who is applying for adjustment of status to preference staus under section 203(b)(5).*

* * * * * * *

(f) The Attorney General may not adjust, under subsection (a), the status of an alien lawfully admitted to the United States for permanent residence on a conditional basis under section 218.

* * * * * * *

ENTRY OF ALIEN AT IMPROPER TIME OR PLACE; MISREPRESENTATION AND CONCEALMENT OF FACTS

SEC. 275. [8 U.S.C. 1325] (a) * * *

* * * * * * *

(c) Any individual who knowingly establishes a commercial enterprise for the purpose of evading any provision of the immigration laws shall be imprisoned for not more than 5 years, or fined not more than $250,000, or both.

* * * * * * *

DISPOSITION OF MONEYS COLLECTED UNDER THE PROVISIONS OF THIS TITLE

SEC. 286. [8 U.S.C. 1356] * * *

(q) VISA FEES FOR IMMIGRANTS.—The Secretary of State shall provide for a schedule of fees to be charged for the filing of a petition for any and all immigrant categories under sections 201(a)(3), 201(b)(2)(A)(i), and 203 (a) and (b). The fees established under this subsection shall be sufficient to cover administrative and other expenses incurred in connection with the processing of petitions for any and all immigrant categories filed under sections 201(a)(3), 201(b)(2)(A)(i), and 203 (a) and (b).

(r) CREDITABLE FEES.—Notwithstanding sections 1 and 2 of the Act of June 4, 1920, as amended (41 Stat. 750; 22 U.S.C. 214) or any other provision of law, up to $20,000,000 in fees collected by consular officers for issuance of visas and for execution of applications for visas shall be credited to a Department of State account which shall be available only for the payment of the expenses of research, development, equipment, and automation of visa and passport functions, including related software. Each fiscal year thereafter additional amounts of such consular fees may be credited to such account, except that not more than $20,000,000 of such fees may be available for such purposes in any one fiscal year.

TITLE III—NATIONALITY AND NATURALIZATION

* * * * * * *

CHAPTER 2—NATIONALITY THROUGH NATURALIZATION

[JURISDICTION TO NATURALIZE

[SEC. 310. [8 U.S.C. 1421] (a) Exclusive jurisdiction to naturalize persons as citizens of the United States is hereby conferred upon the following specified courts: District courts of the United States now existing, or which may hereafter be established by Congress in any State, District Court of the United States for the District of Columbia and for Puerto Rico, the District Court of the Virgin Islands of the United States, and the District Court of Guam; also all

courts of record in any State or Territory now existing, or which may hereafter be created, having a seal, a clerk, and jurisdiction in actions at law or equity, or law and equity, in which the amount in controversy is unlimited. The jurisdiction of all the courts herein specified to naturalize persons shall extend only to such persons resident within the respective jurisdiction of such courts, except as otherwise specifically provided for in this title.

[(b) A person who petitions for naturalization in any State court having naturalization jurisdiction may petition within the State judicial district or State judicial circuit in which he resides, whether or not he resides within the county in which the petition for naturalization is filed.

[(c) The courts herein specified, upon request of the clerks of such courts, shall be furnished from time to time by the Attorney General with such blank forms as may be required in naturalization proceedings.

[(d) A person may be naturalized as a citizen of the United States in the manner and under the conditions prescribed in this title, and not otherwise.]

NATURALIZATION AUTHORITY

SEC. 310. (a) AUTHORITY IN ATTORNEY GENERAL.—The original authority to naturalize persons as citizens of the United States is conferred solely upon the Attorney General.

(b) ADMINISTRATION OF OATHS.—An applicant for naturalization may choose to have the oath of allegiance under section 337(a) administered by the Attorney General or by any district court of the United States for any State or by any court of record in any State having a seal, a clerk, and jurisdiction in actions in law or equity, or law and equity, in which the amount in controversy is unlimited. The jurisdiction of all courts specified in this subsection to administer the oath of allegiance shall extend only to persons resident within the respective jurisdiction of such courts.

(c) APPEAL TO BIA; JUDICIAL REVIEW.—(1) A person whose application for naturalization under this title is denied, after a hearing before an immigration officer under section 336(a), may seek review of such denial before the Board of Immigration Appeals (established by the Attorney General under part 3 of title 8, Code of Federal Regulations). The decision of such Board is reviewable by the United States district court for the district in which such person resides. Such review of the district court shall be de novo, and the district court shall make its own findings of fact and conclusions of law and shall, at the request of the petitioner, conduct a hearing de novo on the application.

(2) The district court shall issue an order authorizing the naturalization of a person in accordance with this title only after determining, upon review of the denial of that person's application for naturalization, that such denial was wrongfully made as a matter of fact or of law.

(d) SOLE PROCEDURE.—A person may only be naturalized as a citizen of the United States in the manner and under the conditions prescribed in this title and not otherwise.

* * * * * * *

SEC. 313 (8 U.S.C. 1424). * * *

(c) The provisions of this section shall be applicable to any applicant for naturalization who at any time within a period of ten years immediately preceding the filing of the [petition] *application* for naturalization or after such filing and before taking the final oath of citizenship is, or has been found to be within any of the classes enumerated within this section, nothwithstanding that at the time the [petition] *application* is filed he may not be included within such classes.

* * * * * * *

SEC. 316. [8 U.S.C. 1427] (a) No person, except as otherwise provided in this title, shall be naturalized, unless such [petitioner,] *applicant* (1) immediately preceding the date of filing his [petition] *application* for naturalization has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least five years and during the five years immediately preceding the date of filing his [petition] *application* has been physically present therein for periods totaling at least half of that time, [and who has resided within the State in which the petitioner filed the petition for at least six months] *and who has resided within the State or within the district of the Service in the United States in which the applicant filed the application for at least three months,* (2) has resided continuously within the United States from the date of the [petition] *application* up to the time of admission to citizenship, and (3) during all the periods referred to in this subsection has been and still is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States.

(b) Absence from the United States of more than six months but less than one year during the period for which continuous residence is required for admission to citizenship, immediately preceding the date of filing the [petition] *application* for nauturalization, or during the period between the date of filing the [petition] *application* and the [date of final hearing,] *date of any hearing under section 336(a)* shall break the continuity of such residence, unless the [petitioner] *applicant* shall establish to the satisfaction of [the court] *the Attorney General* that he did not in fact abandon his residence in the United States during such period.

Absence from the United States for a continuous period of one year or more during the period for which continuous residence is required for admission to citizenship (whether preceding or subsequent to the filing of the [petition] *application* for naturalization) shall break the continuity of such residence except that in the case of a person who has been physically present and residing in the United States after being lawfully admitted for permanent residence for an uninterrupted period of at least one year and who thereafter, is employed by or under contract with the Government of the United States or an American institution of research recognized as such by the Attorney General, or is employed by an American firm or corporation engaged in whole or in part in the development of foreign trade and commerce of the United States, or a subsidiary thereof more than 50 per centum of whose stock is

owned by an American firm or corporation, or is employed by a public international organization of which the United States is a member by treaty or statute and by which the alien was not employed until after being lawfully admitted for permanent residence, no period of absence from the United States shall break the continuity of residence if—

(1) prior to the beginning of such period of employment (whether such period begins before or after his departure from the United States), but prior to the expiration of one year of continuous absence from the United States, the person has established to the satisfaction of the Attorney General that his absence from the United States for such period is to be on behalf of such Government, or for the purpose of carrying on scientific research on behalf of such institution, or to be engaged in the development of such foreign trade and commerce or whose residence abroad is necessary to the protection of the property rights in such countries of such firm or corporation, or to be employed by a public international organization of which the United States is a member by treaty or statute and by which the alien was not employed until after being lawfully admitted for permanent residence; and

(2) such person proves to the satisfaction of the court that his absence from the United States for such period has been for such purpose.

The spouse and dependent unmarried sons and daughters who are members of the household of a person who qualifies for the benefits of this subsection shall also be entitled to such benefits during the period for which they were residing abroad as dependent members of the household of the person.

(c) The granting of the benefits of subsection (b) of this section shall not relieve the [petitioner] *applicant* from the requirement of physical presence within the United States for the period specified in subsection (a) of this section, except in the case of those persons who are employed by, or under contract with, the Government of the United States. In the case of a person employed by or under contract with Central Intelligence Agency, the requirement in subsection (b) of an uninterrupted period of at least one year of physical presence in the United States may be complied with by such person at any time prior to filing [a petition] *an application* for naturalization.

(d) No finding by the Attorney General that the [petitioner] *applicant* is not deportable shall be accepted as conclusive evidence of good moral character.

(e) In determining whether the [petitioner] *applicant* has sustained the burden of establishing good moral character and the other qualifications for citizenship specified in section (a) of this section [the court] *the Attorney General* shall not be limited to the [petitioner's] *applicant's* conduct during the five years preceding the filing of the [petition,] *application,* but may take into consideration as a basis for such determination the [petitioner's] *applicant's* conduct and acts at any time prior to that period.

[(f) Naturalization shall not be granted to a petitioner by a naturalization court while registration proceedings or proceedings to require registration against an organization of which the is a

member or affiliate are pending under section 13 or 14 of the Subversive Activities Control Act of 1950.]

(f)(1) Whenever the Director of Central Intelligence, the Attorney General and the Commissioner of Immigration determine that [a petitioner] *an applicant* otherwise eligible for naturalization has made an extraordinary contribution to the national security of the United States or to the conduct of United States intelligence activities, the [petitioner] *applicant* may be naturalized without regard to the residence and physical presence requirements of this section, or to the prohibitions of section 313 of this Act, and no residence [within the jurisdiction of the court] *within a particular State or district of the Service in the United States* shall be required: *Provided,* That the [petitioner] *applicant* has continuously resided in the United States for at least one year prior to naturalization: *Provided further,* That the provisions of this subsection shall not apply to any alien described in subparagraphs (A) through (D) of paragraph 243(h)(2) of this Act.

(g) * * *

(2) [A petition for naturalization may be filed pursuant to this subsection in any district court of the United States, without regard to the residence of the petitioner.] *An applicant for naturalization under this subsection may be administered the oath of allegiance under section 337(a) by any district court of the United States, without regard to the residence of the applicant.*

* * * * * * *

TEMPORARY ABSENCE OF PERSONS PERFORMING RELIGIOUS DUTIES

SEC. 317. [8 U.S.C. 1428] Any person who is authorized to perform the ministerial or priestly functions of a religious denomination having a bona fide organization within the United States, or any person who is engaged solely by a religious denomination or by an interdenominational mission organization have a bona fide organization within the United States as a missionary, brother, nun, or sister, who (1) has been lawfully admitted to the United States for permanent residence, (2) has at any time thereafter and before filing [a petition] *an application* for naturalization been physically present and residing within the United States for an uninterrupted period of at least one year, and (3) has heretofore been or may hereafter be absent temporarily from the United States in connection with or for the purpose of performing the ministerial or priestly functions of such religious denomination, or serving as a missionary, brother, nun, or sister, shall be considered as being physically present and residing in the United States for the purpose of naturalization within the meaning of section 316(a), notwithstanding any such absence from the United States, if he shall in all other respects comply with the requirements of the naturalization law. Such person shall prove to the satisfaction of the Attorney General [and the naturalization court] that his absence from the United States has been solely for the purpose of performing the ministerial or priestly functions of such religious denomination, or of serving as a missionary, brother, nun, or sister.

PREREQUISITE TO NATURALIZATION; BURDEN OF PROOF

SEC. 318. [8 U.S.C. 1429] Except as otherwise provided in this title, no person shall be naturalized unless he has been lawfully admitted to the United States for permanent residence in accordance with all applicable provisions of this Act. The burden of proof shall be upon such person to show that he entered the United States lawfully, and the time, place, and manner of such entry into the United States, but in presenting such proof he shall be entitled to the production of his immigrant visa, if any, or of other entry document, if any, and of any other documents and records, not considered by the Attorney General to be confidential, pertaining to such entry, in the custody of the Service. Notwithstanding the provisions of section 405(b), and except as provided in sections 328 and 329 no person shall be naturalized against whom there is outstanding a final finding of deportability pursuant to a warrant of arrest issued under the provisions of this or any other Act; and no [petition] *application* for naturalization shall be [finally heard by a naturalization court] *considered by the Attorney General* if there is pending against the [petitioner] *applicant* a deportation proceeding pursuant to a warrant of arrest issued under the provisions of this or any other Act: *Provided,* That the findings of the Attorney General in terminating deportation proceedings or in suspending the deportation of an alien pursuant to the provisions of this Act, shall not be deemed binding in any way [upon the naturalization court] *upon the Attorney General* with respect to the question of whether such person has established his eligibility for naturalization as required by this title.

* * * * * * *

MARRIED PERSONS AND EMPLOYEES OF CERTAIN NONPROFIT ORGANIZATIONS

SEC. 319. [8 U.S.C. 1430] (a) Any person whose spouse is a citizen of the United States may be naturalized upon compliance with all the requirements of this title except the provisions of paragraph (1) of section 316(a) if such person immediately preceding the date of filing his [petition] *application* for naturalization has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least three years, and during the three years immediately preceding the date of filing his [petition] *application* has been living in marital union with the citizen spouse, who has been a United States citizen during all of such period, and has been physically present in the United States for periods totaling at least half of that time and [has resided within the State in which he filed his [petition] *application* for at least six months] *has resided within the State or the district of the Service in the United States in which the applicant filed his application for at least three months* .

(b) Any person, (1) whose spouse is (A) a citizen of the United States, (B) in the employment of the Government of the United States, or of an American institution of research recognized as such by the Attorney General, or of an American firm or corporation engaged in whole or in part in the development of foreign trade and

commerce of the United States, or a subsidiary thereof, or of a public international organization in which the United States participates by treaty or statute, or is authorized to perform the ministerial or priestly functions of a religious denomination having a bona fide organization within the United States, or is engaged solely as a missionary by a religious denomination or by an interdenominational mission organization having a bona fide organization within the United States, and (C) regularly stationed abroad in such employment, and (2) who is in the United States at the time of naturalization, and (3) who declares before the [naturalization court] *Attorney General* in good faith an intention to take up residence within the United States immediately upon the termination of such employment abroad of the citizen spouse, may be naturalized upon compliance with all the requirements of the naturalization laws, except that no prior residence or specified period of physical presence within the United States or [within the jurisdiction of the naturalization court] *within a State or a district of the Service in the United States* or proof thereof shall be required.

(c) Any person who (1) is employed by a bona fide United States incorporated nonprofit organization which is principally engaged in conducting abroad through communications media the dissemination of information which significantly promotes United States interests abroad and which is recognized as such by the Attorney General, and (2) has been so employed continuously for a period of not less than five years after a lawful admission for permanent residence, and (3) who files his [petition] *application* for naturalization while so employed or within six months following the termination thereof, and (4) who is in the United States at the time of naturalization, and (5) who declares before the [naturalization court] *Attorney General* in good faith an intention to take up residence within the United States immediately upon termination of such employment, may be naturalized upon compliance with all the requirements of this title except that no prior residence or specified period of physical presence within the United States or any State or [within the jurisdiction of the court] *district of the Service in the United States* or proof thereof, shall be required.

(d) Any person who is the surviving spouse of a United States citizen, whose citizen spouse dies during a period of honorable service in an active duty status in the Armed Forces of the United States and who was living in marital union with the citizen spouse at the time of his death, may be naturalized upon compliance with all the requirements of this title except that no prior residence or specified physical presence within the United States, or [within the jurisdiction of the naturalization court] *within a State or a district of the Service in the United States* shall be required.

* * * * * * *

CHILD BORN OUTSIDE OF UNITED STATES; NATURALIZATION ON PETITION OF CITIZEN PARENT; REQUIREMENTS AND EXEMPTIONS

SEC. 322. [8 U.S.C. 1433] (a) A child born outside of the United States, one or both of whose parents is at the time of [petitioning] *applying* for the naturalization of the child, a citizen of the United States, either by birth or naturalization, may be naturalized if un-

married and under the age of eighteen years and not otherwise disqualified from becoming a citizen by reason of section 313, 314, 315, or 318 of this Act, and if residing permanently in the United States, with the citizen parent, pursuant to a lawful admission for permanent residence, on the [petition] *application* of such citizen parent, upon compliance with all the provisions of this title, except that no particular period of residence or physical presence in the United States shall be required. If the child is of tender years he may be presumed to be of good moral character, attached to the principles of the Constitution, and well disposed to the good order and happiness of the United States.

* * * * * * *

(c) In the case of an adopted child (1) who is in the United States at the time of naturalization, and (2) one of whose adoptive parents (A) petitions for naturalization of the child under this section, (B) meets the criteria of clauses (A), (B), and (C) of section 319(b)(1), and (C) declares before the [naturalization court] *the Attorney General* in good faith an intention to take up residence within the United States immediately upon the termination of the employment described in section 319(b)(1)(B), no specified period of residence [within the jurisdiction of the naturalization court] *within a State or a district of the Service in the United States* or proof thereof shall be required.

[SEC. 323. Repealed.]

FORMER CITIZENS OF UNITED STATES REGAINING UNITED STATES CITIZENSHIP

SEC. 324. [8 U.S.C. 1435] (a) Any person formerly a citizen of the United States who (1) prior to September 22, 1922, lost United States citizenship by marriage to an alien, or by the loss of United States citizenship of such person's spouse, or (2) on or after September 22, 1922, lost United States citizenship by marriage to an alien ineligible to citizenship, may if no other nationality was acquired by an affirmative act of such person other than by marriage be naturalized upon compliance with all requirements of this title, except—

(1) no period of residence or specified period of physical presence within the United States or within the State *or district of the Service in the United States* where the petition is filed shall be required; *and*

(2) the [petition] *application* need not set forth that it is the intention of the [petitioned] *applicant* to reside permanently within the United States.

[(3) the petition application may be filed in any court having naturalization jurisdiction, regardless of the residence of the petitioner.

[(4) the petition may be heard at any time after filing if there is attached to the petition at the time of filing a certificate from a naturalization examiner stating that the petitioner has appeared before such examiner for examination.]

Such person, or any person who was naturalized in accordance with the provisions of section 317(a) of the Nationality Act of 1940, shall have, from and after her naturalization, the status of a

native-born or naturalized citizen of the United States, whichever status existed in the case of such person prior to the loss of citizenship: *Provided,* That nothing contained herein or in any other provision of law shall be construed as conferring United States citizenship retroactively upon such person, or upon any person who was naturalized in accordance with the provisions of section 317(a) of the Nationality Act of 1940, during any period in which such person was not a citizen.

(b) No person who is otherwise eligible for naturalization in accordance with the provisions of subsection (a) of this section shall be naturalized unless such person shall establish to the satisfaction of the [naturalization court] *Attorney General* that she has been a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States for a period of not less than five years immediately preceding the date of filing [a petition] *an application* for naturalization and up to the time of admission to citizenship, and unless she has resided continuously in the United States since the date of her marriage, has been lawfully admitted for permanent residence prior to filing her [petition] *application* for naturalization.

(c)(1) A woman who was a citizen of the United States at birth and (A) who has or is believed to have lost her United States citizenship solely by reason of her marriage prior to September 22, 1922, to an alien, or by her marriage on or after such date to an alien ineligible to citizenship, (B) whose marriage to such alien shall have terminated subsequent to January 12, 1941, and (C) who has not acquired by an affirmative act other than by marriage any other nationality, shall, from and after taking the oath of allegiance required by section 337 of this title, be a citizen of the United States and have the status of a citizen of the United States by birth, without filing [a petition] *an application* for naturalization, and notwithstanding any of the other provisions of this title except the provisions of section 313: *Provided,* That nothing contained herein or in any other provision of law shall be construed as conferring United States citizenship retroactively upon such person, or upon any person who was naturalized in accordance with the provisions of section 317(b) of the Nationality Act of 1940, during any period in which such person was not a citizen.

(2) Such oath of allegiance may be taken abroad before a diplomatic or consular officer of the United States, or in the United States before [the judge or clerk of a naturalization court.] *the Attorney General or the judge or clerk of a court described in section 310(b).*

(3) Such oath of allegiance shall be entered in the records of the appropriate embassy, legation, consulate, [or naturalization court] *court, or the Attorney General* and, upon demand, a certified copy of the proceedings, including a copy of the oath administered, under the seal of the embassy, legation, consulate, [or naturalization court] *court, or the Attorney General* shall be delivered to such woman at the cost not exceeding $5, which certified copy shall be evidence of the facts stated therein before any court of record or judicial tribunal and in any department or agency of the Government of the United States.

NATIONALS BUT NOT CITIZENS OF THE UNITED STATES; RESIDENCE WITHIN OUTLYING POSSESSIONS

SEC. 325. [8 U.S.C. 1436] A person not a citizen who owes permanent allegiance to the United States, and who is otherwise qualified, may, if he becomes a resident of any State, be naturalized upon compliance with the applicable requirements of this title, except that in [petitions] *applications* for naturalization filed under the provisions of this section residence and physical presence within the United States within the meaning of this title shall include residence and physical presence within any of the outlying possessions of the United States.

RESIDENT PHILIPPINE CITIZENS EXCEPTED FROM CERTAIN REQUIREMENTS

SEC. 326. [8 U.S.C. 1437] Any person who (1) was a citizen of the Commonwealth of the Philippines on July 2, 1946, (2) entered the United States prior to May 1, 1934, and (3) has since such entry, resided continuously in the United States shall be regarded as having been lawfully admitted to the United States for permanent residence for the purpose of [petitioning] *applying* for naturalization under this title.

FORMER UNITED STATES CITIZENS LOSING CITIZENSHIP BY ENTERING THE ARMED FORCES OF FOREIGN COUNTRIES DURING WORLD WAR II

SEC. 327. [8 U.S.C. 1438] (a) Any person who, (1) during World War II and while a citizen of the United States, served in the military, air, or naval forces of any country at war with a country with which the United States was at war after December 7, 1941, and before September 2, 1945, and (2) has lost United States citizenship by reason of entering or serving in such forces, or taking an oath or obligation for the purpose of entering such forces, may, upon compliance with all the provisions of title III, of this Act, except section 316(a), and except as otherwise provided in subsection (b), be naturalized by taking before [any naturalization court specified in section 310(a) of this title] *the Attorney General or before a court described in section 310(b)* the oath required by section 337 of this title. Certified copies of such oath shall be sent by such court to the Department of State and to the Department of Justice *and by the Attorney General to the Secretary of State.*

* * * * * * *

NATURALIZATION THROUGH SERVICE IN THE ARMED FORCES OF THE UNITED STATES

SEC. 328. [8 U.S.C. 1439] (a) A person who has served honorably at any time in the Armed Forces of the United States for a period or periods aggregating three years, and who, if separated from such service, was never separated except under honorable conditions, may be naturalized without having resided, continuously immediately preceding the date of filing such person's [petition] *application* in the United States for at least five years, and in the State *in the United States or district of the Service* in which the [petition] *application* for naturalization is filed for at least [six] *three*

months, and without having been physically present in the United States for any specified period, if such [petition] *application* is filed while the [petitioner] *applicant* is still in the service or within six months after the termination of such service.

(b) A person filing [a petition] *an application* under subsection (a) of this section shall comply in all other respects with the requirements of this title, except that—

(1) no residence [within the jurisdiction of the court] *within a State or district of the Service in the United States* shall be required;

* * * * * * *

(c) In the case such [petitioner's] *applicant's* service was not continuous, the [petitioner's] *applicant's* residence in the United States and State *or district of the Service in the United States*, good moral character, attachment to the principles of the Constitution of the United States, and favorable disposition toward the good order and happiness of the United States, during any period within five years immediately preceding the date of filing such [petition] *application* between the periods of [petitioner's] *applicant's* service in the Armed Forces, shall be alleged in the [petition] *application* filed under the provisions of subsection (a) of this section, and proved at [the final hearing] *any hearing* thereon. Such allegation and proof shall also be made as to any period between the termination of [petitioner's] *applicant's* service and the filing of the petition for naturalization.

(d) The [petitioner] *applicant* shall comply with the requirements of section 316(a) of this title, if the termination of such service has been more than six months preceding the date of filing such [petition] *application* shall be considered as residence and physical presence within the United States.

(e) Any such period or periods of service under honorable conditions, and good moral character, attachment to the principles of the Constitution of the United States, and favorable disposition toward the good order and happiness of the United States, during such service, shall be proved by duly authenticated copies of the records of the executive departments having custody of the records of such service, and such authenticated copies of records shall be accepted in lieu of compliance with the provisions of section 316(a).

* * * * * * *

SEC. 329. [8 U.S.C. 1440] (a) [Any] *Except as provided in subsection (e), any* person who, while an alien or a noncitizen national of the United States has served honorably in an active-duty status in the military, air, or naval forces of the United States during either World War I or during a period beginning September 1, 1939, and ending December 31, 1946, or during a period beginning June 25, 1950, and ending July 1, 1955, or during a period beginning February 28, 1961, and ending on a date designated by the President by Executive order as the date of termination of the Vietnam hostilities, or thereafter during any other period which the President by Executive order shall designate as a period in which Armed Forces of the United States are or were engaged in military operations involving armed conflict with a hostile foreign force, and who, if sep-

arated from such service, was separated under honorable conditions, may be naturalized as provided in this section if (1) at the time of enlistment or induction such person shall have been in the United States, the Canal Zone, America Samoa, or Swains Island, whether or not he has been lawfully admitted to the United States for permanent residence, or (2) at any time subsequent to enlistment or induction such person shall have been lawfully admitted to the United States for permanent residence. The executive department under which such person served shall determine whether persons have served honorably in an active-duty status, and whether separation from such service was under honorable conditions: *Provided, however,* That no person who is or has been separated from such service on account of alienage, or who was a conscientious objector who performed no military, air, or naval duty whatever or refused to wear the uniform, shall be regarded as having served honorably or having been separated under honorable conditions for the purposes of this section. No period of service in the Armed Forces shall be made the basis of a petition for naturalization under this section if the applicant has previously been naturalized on the basis of the same period of service.

(b) A person filing [a petition] *an application* under subsection (a) of this section shall comply in all other respects with the requirements of this title, except that—

(1) he may be naturalized regardless of age, and notwithstanding the provisions of section 318 as they relate to deportability and the provisions of section 331;

(2) no period of residence or specified period of physical presence within the United States or any State *or district of the Service in the United States* shall be required; and

[(3) the petition for naturalization may be filed in any court having naturalization jurisdiction regardless of the residence of the petitioner; and]

[(4)] *(3)* service in the military, air, or naval forces of the United States shall be proved by a duly authenticated certification from the executive department under which the petitioner served or is serving, which shall state whether the petitioner served honorably in an active-duty status during either World War I or during a period beginning September 1, 1939, and ending December 31, 1946, or during a period beginning June 25, 1950, and ending July 1, 1955, or during a period beginning February 28, 1961, and ending on a date designated by the President by Executive order as the date of termination of the Vietnam hostilities, or thereafter during any other period which the President by Executive order shall designate as a period in which Armed Forces of the United States are or were engaged in military operations involving armed conflict with a hostile foreign force, and was separated from such service under honorable conditions.

* * * * * * *

(c) Citizenship granted pursuant to this section may be revoked in accordance with section 340 of this title if at any time subsequent to naturalization the person is separated from the military, air, or naval forces under other than honorable conditions, and

such ground for revocation shall be in addition to any other provided by law. The fact that the naturalized person was separated from the service under other than honorable conditions shall be proved by a duly authenticated certification from the executive department under which the person was serving at the time of separation.

(d) Paragraphs (1) and (2) of subsection (a) shall not apply to the naturalization of any person—

(1) who was born in the Philippines or who was otherwise a noncitizen national of the United States residing in the Philippines before the service described in paragraph (2);

(2) who served honorably in an active-duty status in the military, air, or naval forces of the United States at any time during the period beginning September 1, 1939, and ending December 31, 1946;

(3) who is otherwise eligible for naturalization under this section; and

(4) who applies for naturalization not later than one year after the date of enactment of the Naturalization Amendments of 1989.

* * * * * * *

CONSTRUCTIVE RESIDENCE THROUGH SERVICE ON CERTAIN UNITED STATES VESSELS

SEC. 330. [8 U.S.C. 1441] Any periods of time during all of which a person who was previously lawfully admitted for permanent residence has served honorably or with good conduct, in any capacity other than as a member of the Armed Forces of the United States, (A) on board a vessel operated by the United States, or an agency thereof, the full legal and equitable title to which is in the United States; or (B) on board a vessel whose home port is in the United States, and (i) which is registered under the laws of the United States, or (ii) the full legal and equitable title to which is in a citizen of the United States, or a corporation organized under the laws of any of the several States of the United States, shall be deemed residence and physical presence within the United States within the meaning of section 316(a) of this title, if such service occurred within five years immediately preceding the date such person shall file [a petition] *an application* for naturalization. Service on vessels described in clause (A) of this subsection shall be proved by duly authenticated copies of the records of the executive departments or agency having custody of records of such service. Service on vessels described in clause (B) of this subsection may be proved by certificates from the masters of such vessels.

ALIEN ENEMIES; NATURALIZATION UNDER SPECIFIED CONDITIONS AND PROCEDURE

SEC. 331. [8 U.S.C. 1442] (a) An alien who is a native, citizen, subject, or denizen of any country, state, or sovereignty with which the United States is at war may, after his loyalty has been fully established upon investigation by the Attorney General, be naturalized as a citizen of the United States if such alien's [petition] *application* for naturalization shall be pending at the beginning of the

state of war and the [petitioner] *applicant* is otherwise entitled to admission to citizenship.

(b) An alien embraced within this section shall not have his [petition] *application* for naturalization [called for a hearing, or heard, except after ninety days' notice given by the clerk of the court to the Attorney General to be represented at the hearing, and the Attorney General's objection to such final hearing shall cause the petition to be continued] *considered or heard except after 90 days' notice to the Attorney General regarding the application, and the Attorney General's objection to such consideration shall cause the application to be continued* from time to time for so long as the Attorney General may require.

(c) The Attorney General may, in his discretion, upon investigation fully establishing the loyalty of any alien enemy who did not have [a petition] *an application* for naturalization pending at the beginning of the state of war, except such alien enemy from the classification of alien enemy for the purposes of this title, and thereupon such alien shall have the privilege of filing [a petition] *an application* for naturalization.

(d) An alien who is a native, citizen, subject, or denizen of any country, state, or sovereignty with which the United States is at war shall cease to be an alien enemy within the meaning of this section upon the determination by proclamation of the President, or by concurrent resolution of the Congress, that hostilities between the United States and such country, state, or sovereignty have ended. [Notwithstanding the provisions of section 405(b), this subsection shall also apply to the case of any such alien whose petition for naturalization was filed prior to the effective date of this Act and which is still pending on that date.]

(e) Nothing contained herein shall be taken or construed to interfere with or prevent the apprehension and removal, consistent with law, of any alien enemy at any time prior to the actual naturalization of such alien.

* * * * * * *

PROCEDURAL AND ADMINISTRATIVE PROVISIONS; EXECUTIVE FUNCTIONS

SEC. 332. [8 U.S.C. 1443] (a) The Attorney General shall make such rules and regulations as may be necessary to carry into effect the provisions of this chapter and is authorized to prescribe the scope and nature of the examination of petitioners for naturalization as to their admissibility to citizenship [for the purpose of making appropriate recommendations to the naturalization courts. Such examination, in the discretion of the Attorney General, and under such rules and regulations as may be prescribed by him, may be conducted before or after the applicant has filed his petition for naturalization.].

* * * * * * *

(g) The officers in charge of property owned or leased by the Government are authorized, upon the recommendation of the Attorney General, to provide quarters without payment of rent, in any building occupied by the Service, for a photographic studio, operated by welfare organizations without profit and solely for the benefit of

persons seeking to comply with requirements under the immigration and nationality laws. Such studio shall be under the supervision of the Attorney General.

(h) The Attorney General shall broadly disseminate information respecting the benefits which persons may receive under this title and the requirements to obtain such benefits. In carrying out this subsection, the Attorney General shall seek the assistance of appropriate community groups, private voluntary agencies, and other relevant organizations, and the Attorney General is authorized to make grants to, and enter into contracts with, such organizations for such purposes.

* * * * * * *

SEC. 333. [8 U.S.C. 1444] (a) Three identical photographs of the *applicant* shall be signed by and furnished by each [petitioner] *applicant* for naturalization or citizenship. One of such photographs shall be affixed by the [clerk of the court] *Attorney General* to the original certificate of naturalization issued to the naturalized citizen and one to the duplicate certificate of naturalization required to be forwarded to the Service.

* * * * * * *

[PETITION FOR NATURALIZATION; DECLARATION OF INTENTION]

APPLICATION FOR NATURALIZATION; DECLARATION OF INTENTION

SEC. 334. [8 U.S.C. 1445] (a) An applicant for naturalization shall make and file [in the office of the clerk of a naturalization court] *with the Attorney General* in duplicate, a sworn [petition] *application* in writing, signed by the applicant in the applicant's own handwriting, if physically able to write, which [petition] *application* shall be on a form prescribed by the Attorney General and shall include averments of all facts which in the opinion of the Attorney General may be material the applicant's naturalization, and required to be proved [upon the hearing of such petition.] *under this title.*

(b) No person shall file a valid [petition] *application* for naturalization unless [(1)] he shall have attained the age of eighteen years [and (2) he shall have first filed an application therefor at an office of the Service in the form and manner prescribed by the Attorney General]. An application [for petition] for naturalization by an alien shall contain an averment of lawful admission for permanent residence.

[(c) Petitions for naturalization may be made and filed during the term time or vacation of the naturalization court and shall be docketed the same day as filed, but final action thereon shall be had only on stated days, to be fixed by rule of the court.

[(d) If the applicant for naturalization is prevented by sickness or other disability from presenting himself in the office of the clerk to make the petition required by subsection (a) such applicant may make such petition at such other place as may be designated by the clerk of court or by such clerk's authorized deputy.

[(e) Before a petition at such other place as may be made outside of the office of the clerk of the court, pursuant to subsection (d) above, or before a final hearing on a petition may be held or the

oath of allegiance administered outside of open court, pursuant to sections 336(a) and 337(c) respectively of this title, the court must satisfy itself that the illness or other disability is sufficiently serious to prevent appearance in the office of the clerk of court and is of a permanent nature, or of a nature which so incapacitates the person as to prevent him from personally appearing in the office of the clerk of court or in court as otherwise required by law.]

(c) Hearings under section 336(a) on applications for naturalization shall be held at regular intervals, to be fixed by the Attorney General.

(d) Except as provided in subsection (e), an application for naturalization shall be filed in person in an office of the Attorney General.

(e) A person may file an application for naturalization other than in an office of the Attorney General, and an oath of allegiance may be administered other than in a public ceremony before the Attorney General or a court, if the Attorney General determines that the person has an illness or other disability which—

(1) is of a permanent nature and is sufficiently serious to prevent the person's personal appearance, or

(2) is of a nature which so incapacitates the person as to prevent him from personally appearing.

(f) [Any alien over eighteen years of age who is residing in the United States pursuant to a lawful admission for permanent residence may, upon an application prescribed, filed with, and approved by the Service, make and file in duplicate in the office of the clerk of court, regardless of the alien's place of residence in the United States, a signed declaration of intention to become a citizen of the United States, in such form as the Attorney General shall prescribe.] *An alien who has attained the age of 18 years of age and who is residing in the United States pursuant to a lawful admission for permanent residence may file with the Attorney General a declaration of intention to become a citizen of the United States. Such a declaration shall be filed in duplicate and in a form prescribed by the Attorney General and shall be accompanied by an application prescribed and approved by the Attorney General.* Nothing in this subsection shall be construed as requiring any such alien to make and file a declaration of intention as a condition precedent to filing [a petition] *an application* for naturalization nor shall any such declaration of intention be regarded as conferring or having conferred upon any such alien United States citizenship or nationality or the right to United States citizenship or nationality, nor shall such declaration be regarded as evidence of such alien's lawful admission for permanent residence in any proceeding, action, or matter arising under this or any other Act.

[INVESTIGATION OF PETITIONERS; PRELIMINARY EXAMINATIONS ON PETITIONS]

INVESTIGATION OF APPLICANTS; EXAMINATION OF APPLICATIONS

SEC. 335. [8 U.S.C. 1446] (a) [At any time prior to the holding of the final hearing on a petition for naturalization provided for by section 336(a)] *Before a person may be naturalized* an employee of the Service, or of the United States designated by the Attorney

General, shall conduct a personal investigation of the person [petitioning] *applying* for naturalization in the vicinity or vicinities in which such person has maintained his actual place of abode and in the vicinity or vicinities in which such person has been employed or has engaged in business or work for at least five years immediately preceding the filing of is [petition] *application* for naturalization. The Attorney General may, in his discretion, waive a personal investigation in an individual case or in such cases or classes of cases as may be designated by him.

(b) The Attorney General shall designate employees of the Service to conduct [preliminary] examinations upon [petitions] *applications* for naturalization [to any naturalization court and to make recommendations thereon to such court]. For such purposes any such employee so designated is hereby authorized to take testimony concerning any matter touching or in any way affecting the admissibility of any [petitioner] *applicant* for naturalization, to administer oaths, including the oath of the [petitioner] *applicant* for naturalization, and to require by subpoena the attendance and testimony of witnesses, including [petitioner] *applicant* before such employee so designated and the production of relevant books, papers, and documents, and to that end may invoke the aid of [any court exercising naturalization jurisdiction as specified in section 310 of this title] *any district court of the United States*; and any such court may, in the event of neglect or refusal to respond to a subpoena issued by any such employee so designated or refusal to testify before such employee so designated issue an order requiring such person to appear before such employee so designated, produce relevant books, papers, and documents if demanded, and testify; and any failure to obey such order of the court may be punished by the court as a contempt thereof. The record of the [preliminary] examination authorized by this subsection shall be admissible as evidence in any [final hearing conducted by a naturalization court designated in section 310 of this title] *hearing conducted by an immigration officer under section 336(a).*

(c) The record of the [preliminary] examination upon any [petition] *application* for naturalization may, in the discretion of the Attorney General, be transmitted to the Attorney General and the [recommendation] *determination* with respect thereto of the employee designated to conduct such [preliminary] examination shall when made also be transmitted to the Attorney General.

[(d) The recommendation of the employee designated to conduct any such preliminary examination shall be submitted to the court at the hearing upon the petition and shall include a recommendation that the petition be granted, or denied, or continued, with reasons therefor. In any case in which the recommendation of the Attorney General does not agree with that of the employee designated to conduct such preliminary examination, the recommendations of both such employee and the Attorney General shall be submitted to the court at the hearing upon the petition, and the officer of the Service in attendance at such hearing shall, at the request of the court, present both the views of such employee and those of the Attorney General with respect to such petition to the court. The recommendations of such employee and of the Attorney General shall be accompanied by duplicate lists containing the names of the

petitioners, classified according to the character of the recommendations, and signed by such employee or the Attorney General, as the case may be. The judge to whom such recommendations are submitted shall, if he approves such recommendations, enter a written order with such exceptions as the judge may deem proper, by subscribing his name to each such list when corrected to conform to his conclusions upon such recommendations. One of each such list shall thereafter be filed permanently of record in such court and the duplicate of each such list shall be sent by the clerk of such court to the Attorney General.]

(d) The employee designated to conduct any such examination shall submit to the Attorney General a determination as to whether the application be granted, denied, or continued, with reasons therefor.

[(e) After the petition for naturalization has been filed in the office of the clerk of court, the petitioner shall not be permitted to withdraw his petition, except with the consent of the Attorney General. In cases where the Attorney General does not consent to withdrawal of the petition, the court shall determine the petition on its merits and enter a final order accordingly. In cases where the petitioner fails to prosecute his petition, the petition shall be decided upon its merits unless the Attorney General moves that the petition be dismissed for lack of prosecution.]

(e) After an application for naturalization has been filed with the Attorney General, the applicant shall not be permitted to withdraw his application, except with the consent of the Attorney General. In cases where the Attorney General does not consent to the withdrawal of the application, the application shall be determined on its merits and a final determination made accordingly. In cases where the applicant fails to prosecute his application, the application shall be decided on the merits unless the Attorney General dismisses it for lack of prosecution.

[(f)(1) A petitioner for naturalization who removes from the jurisdiction of the court in which his petition for naturalization is pending may, at any time thereafter, make application to the court for transfer of the petition to a naturalization court exercising jurisdiction over the petitioner's place of residence, or to any other naturalization court if the petition was not required to be filed in a naturalization court exercising jurisdiction over the petitioner's place of residence: *Provided*, That such transfer shall not be made without the consent of the Attorney General, and of the court to which the petition is transferred.

[(2) Where transfer of the petition is authorized the clerk of court in which the petition was filed shall forward a certified copy of the petition and the original record in the case to the clerk of court to which the petition is transferred, and proceedings on the petition shall thereafter continue as though the petition had originally been filed in the court to which transferred.]

(f) An applicant for naturalization who moves from the district of the Service in the United States in which the application is pending may, at any time thereafter, request the Service to transfer the application to any district of the Service in the United States which may act on the application. The transfer shall not be made without the consent of the Attorney General. In the case of such a transfer,

the proceedings on the application shall continue as though the application had originally been filed in the district of the Service to which the application is transferred.

[FINAL HEARING IN OPEN COURT UPON PETITIONS FOR NATURALIZATION; FINAL ORDER UNDER THE HAND OF THE COURT ENTERED UPON RECORD; EXAMINATION OF PETITIONER BEFORE THE COURT

[Sec. 336. [8 U.S.C. 1447] (a) Every final hearing upon a petition for naturalization shall be had in open court before a judge or judges thereof, and every final order which may be made upon such petition shall be under the hand of the court and entered in full upon a record for that purpose, and upon such final hearing of such petition the petitioner, except as provided in subsection (b) of this section, shall be examined under oath before the court and in the presence of the court. If the petitioner is prevented by sickness or other disability from being in open court for the final hearing upon a petition for naturalization, such final hearing may be had before a judge or judges of the court at such place as may be designated by the court.

[(b) The requirement of subsection (a) of this section for the examination of the petitioner under oath before the court and in the presence of the court shall not apply in any case where an employee designated under section 335(b) has conducted the preliminary examination authorized by subsection (b) of section 335; except, that the court may, in its discretion, and shall upon demand of the petitioner, require the examination of the petitioner under oath before the court and in the presence of the court.]

HEARINGS ON DENIALS OF APPLICATIONS FOR NATURALIZATION

(a) If, after an examination under section 335, an application for naturalization is denied or continued, the applicant may request a hearing before and immigration officer.

(b) Where there has been a failure to make a determination under section 335 on an application or a failure to have a hearing under subsection (a) on a denial or continuance of an application, the Board of Immigration Appeals (established by the Attorney General under part 3 of title 8, Code of Federal Regulations) may, in its discretion, and shall, at the request of the applicant in extraordinary circumstances, require such a determination or hearing.

* * * * * * *

(c) The Attorney General shall have the right to appear before any [court] *immigration officer* in any naturalization proceedings for the purpose of cross-examining the [petitioner] *application* and the witnesses produced in support of the [petition] *applicant* concerning any matter touching or in any way affecting the [petitioner's] *applicant's* right to admission to citizenship, and shall have the right to call witnesses, including the [petitioner] *applicant* produce evidence, and be heard in opposition to, or in favor of, the granting of any [petition] *application* in naturalization proceedings.

(d) The [clerk of the court shall, if the petitioner requests it at the time of the filing the petition for naturalization,] *immigration officer shall, if the applicant requests it at the time of filing the re-*

quest for the hearing, issue a subpena for the witnesses named by such [petitioner] *applicant* to appear upon the day set for the [final] hearing, but in case such witnesses cannot be produced upon the [final] hearing other witnesses may be summoned upon notice to the Attorney General, in such manner and at such time as the Attorney General may by regulation prescribe. *Such subpenas may be enforced in the same manner as subpenas under section 335(b) may be enforced.*

(e) It shall be lawful at the time and as part of the [naturalization of any person] *administration by a court of the oath of allegiance under section 337(a)* for the court, in its discretion, upon the bona fide prayer of the [petitioner] *applicant* [included in the petition for naturalization of such persons], *included in a appropriate petition to the court,* to make a decree changing the name of said person, and the certificate of naturalization shall be issued in accordance therewith.

OATH OF RENUNCIATION AND ALLEGIANCE

SEC. 337. [8 U.S.C. 1448] (a) A person who has [petitioned] *applied* for naturalization shall, in order to be and before being admitted to citizenship, take [in open court] *in a public ceremony before the Attorney General or a court with jurisdiction under section 310(b),* an oath (1) to support the Constitution of the United States; (2) to renounce and abjure absolutely and entirely all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which the [petitioner] *applicant* was before a subject or citizen; (3) to support and defend the Constitution and the laws of the United States against all enemies, foreign and domestic; (4) to bear true faith and allegiance to the same; and (5) (A) to bear arms on behalf of the United States when required by the law, or (B) to perform noncombatant service in the Armed Forces of the United States when required by the law, or (C) to perform work of national importance under civilian direction when required by the law. Any such person shall be required to take an oath containing the substance of clauses (1) through (5) of the preceding sentence, except that a person who shows by clear and convincing evidence to the satisfaction of the [naturalization court] *Attorney General* that he is opposed to the bearing of arms in the Armed Forces of the United States by reason of religious training and belief shall be required to take an oath containing the substance of clauses (1) through (4) and clauses (5)(B) and (5)(C), and a person who shows by clear and convincing evidence to the satisfaction of the [naturalization court] *Attorney General* that he is opposed to any type of service in the Armed Forces of the United States by reason of religious training and belief shall be required to take an oath containing the substance of clauses (1) through (4) and clause (5)(C). The term "religious training and belief" as used in this section shall mean an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code. In the case of the naturalization of a child under the provisions of section 322 of this title the [naturalization court] *Attorney General* may

waive the taking of the oath if in the opinion of [the court] *the Attorney General* the child is unable to understand its meaning.

(b) In case the person [petitioning] *applying* for naturalization has borne any hereditary title, or has been of any of the orders of nobility in any foreign state, the [petitioner] *applicant* shall in addition to complying with the requirements of subsection (a) of this section, make under oath [in open court in the court in which the petition for naturalization is made], *in the same public ceremony in which the oath of allegiance is administered,* an express renunciation of such title or order of nobility, and such renunciation shall be recorded [in the court] as a part of such proceedings.

(c) If the [petitioner] *applicant* is prevented by sickness or other disability from [being in open court,] *attending a public ceremony,* the oath required to be taken by subsection (a) of this section may be taken [before a judge of the court at such place as may be designated by the court.] *at such place as the Attorney General may designate under section 334(e).*

(d) The Attorney General shall prescribe rules and procedures to ensure that the public ceremonies conducted by the Attorney General for the administration of oaths of allegiance under this section are in keeping with the dignity of the occasion.

CERTIFICATE OF NATURALIZATION; CONTENTS

SEC. 338. [8 U.S.C. 1449] A person admitted to citizenship [by a naturalization court] in conformity with the provisions of this title shall be entitled upon such admission to receive from [the clerk of such court] *the Attorney General* a certificate of naturalization, which shall contain substantially the following information: Number of [petition] *application* for naturalization; number of certificate of naturalization; date of naturalization; name, signature, place of residence, autographed photograph, and personal description of the naturalized person, including age, sex, marital status, and country of former nationality; [title, venue and location of the naturalization court;] *location of the district office of the Service in which the application was filed and the title, authority, and location of the official or court administering the oath of allegiance,* statement that [the court] *the Attorney General* having found that the [petitioner] *applicant* intends to reside permanently in the United States, except in cases falling within the provisions of section 324(a) of this title, had complied in all respects with all of the applicable provisions of the naturalization laws of the United States, and was entitled to be admitted as a citizen of the United States of America, thereupon ordered that the [petitioner] *applicant* be admitted as a citizen of the United States of America; attestation [of the clerk of the naturalization court; and seal of the court], *of an immigration officer; and the seal of the Department of Justice.*

[FUNCTIONS AND DUTIES OF CLERKS

[SEC. 339. [8 U.S.C. 1450] (a) It shall be the duty of the clerk of each and every naturalization court to forward to the Attorney General a duplicate of each petition for naturalization within thirty days after the close of the month in which such petition was

filed, and to forward to the Attorney General certified copies of such other proceedings and orders instituted in or issued out of said court affecting or relating to the naturalization of persons as may be required from time to time by the Attorney General.

[(b) It shall be the duty of the clerk of each and every naturalization court to issue to any person admitted by such a court to citizenship a certificate of naturalization and to forward to the Attorney General within thrity days after the close of the month in which such certificate was issued, a duplicate thereof, and to make and keep on file in the clerk's office a stub for each certificate so issued, whereon shall be entered a memorandum of all the essential facts set forth in such certificate, and to forward a duplicate of each such stub to the Attorney General within thirty days after the close of the month in which such certificate was issued.

[(c) It shall be the duty of the clerk of each and every naturalization court to report to the Attorney General, within thirty days after the close of the month in which the final hearing and decision of the court was had, the name and number of the petition of each and every person who shall be denied naturalization together with the cause of such denial.

[(d) Clerks of courts shall be responsible for all blank certificates of naturalization received by them from time to time from the Attorney General, and shall account to the Attorney General for them whenever required to do so. No certificate of naturalization received by any clerk of court which may be defaced or injured in such manner as to prevent its use as herein provided shall in any case be destroyed, but such certificates shall be returned to the Attorney General.

[(e) It shall be the duty of the clerk of each and every naturalization court to cause to be filed in choronological order in separate volumes, indexed, consecutively numbered, and made a part of the records of such court, all declarations of intention and petitions for naturalization.]

FUNCTIONS AND DUTIES OF CLERKS AND RECORDS OF DECLARATIONS OF INTENTION AND APPLICATIONS FOR NATURALIZATION

SEC. 339. (a) The clerk or each court that administers oaths of allegiance under section 337 shall—

(1) issue to each person to whom such an oath is administered a document evidencing that such an oath was administered.

(2) forward to the Attorney General information concerning each person to whom such an oath is administered by the court, within 30 days after the close of the month in which the oath was administered,

(3) make and keep on file evidence for each such document issued, and

(4) forward to the Attorney General certified copies of such other proceedings and orders instituted in or issued out of the court affecting or relating to the naturalization of persons as may be required from time to time by the Attorney General.

(b) Each district office of the Service in the United States shall maintain, in chronological order, indexed, and consecutively num-

bered, as part of its permanent records, all declarations of intention and applications for naturalization filed with the office.

REVOCATION OF NATURALIZATION

SEC. 340. [8 U.S.C. 1451] (a) It shall be the duty of the United States attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings [in any court specified in subsection (a) of section 310 of this title] *in any district court of the United States,* * * *

* * * * * * *

FISCAL PROVISIONS

SEC. 344. [8 U.S.C. 1455] (a) [The clerk of court] *The Attorney General* shall charge, collect, and account for fees prescribed by the Attorney General pursuant to section 9701 of title 31, United States Code for the following:

(1) Making, filing, and docketing [a petition] *an application* for naturalization, including the [final] hearing on such [petition] *application* if such hearing be held, and a certificate of naturalization, if the issuance of such certificate is authorized by [the naturalization court] *the Attorney General.*

* * * * * * *

[(c) The clerk of any naturalization court specified in subsection (a) of section 310 (except the courts specified in subsection (d) of this section) shall account for and pay over to the Attorney General one-half of all fees up to the sum of $40,000, and all fees in excess of $40,000, collected by any such clerk in naturalization proceedings in any fiscal year.

[(d) The clerk of any United States district court (except in the District Court of the Virgin Islands of the United States and in the District Court of Guam) shall acount for and pay over to the Attorney General all fees collected by any such clerk in naturalization proceedings: *Provided, however,* That the clerk of the District Court of the Virgin Islands of the United States and of the District Court of Guam shall report but shall not be required to pay over to the Attorney General the fees collected by any such clerk in naturalization proceedings.

[(e) The accounting required by subsections (c) and (d) of this section shall be made and the fees paid over to the Attorney General by such respective clerks in their quarterly accounts which they are hereby required to render to the Attorney General within thirty days from the close of each quarter of each and every fiscal year, in accordance with regulations prescribed by the Attorney General.

[(f) The clerks of the various naturalization courts shall pay all additional clerical force that may be required in performing the duties imposed by this title upon clerks of courts from fees retained under the provisions of this section by such clerks in naturalization proceedings.]

[(g)] *(c)* All fees collected by the Attorney General[, and all fees paid over to the Attorney General by clerks of courts under the provisions of this title] shall be deposited by the Attorney General

in the Treasury of the United States except that all fees collected by the Attorney General, on or after October 1, 1988, under the provisions of this subchapter, shall be deposited in the "Immigration Examinations Fee Account" in the Treasury of the United States established pursuant to the provisions of sections 286 (m), (n), (o), and (p): *Provided, however,* That all fees received by the Attorney General [or by the clerks of the courts] from applicants residing in the Virgin Islands of the United States, and in Guam, under this title, shall be paid over to the treasury of the Virgin Islands and to the treasury of Guam, respectively.

[h] *(d)* During the time when the United States is at war [no clerk of a United States court shall] *the Attorney General may not* charge or collect a naturalization fee from an alien in the military, air, or naval service of the United States for filing [a petition] *an application* for naturalization or issuing a certificate of naturalization upon admission to citizenship [and no clerk of any State court shall charge or collect any fee for such services unless the laws of the State require such charge to be made, in which case nothing more than the portion of the fee required to be paid to the State shall be charged or collected. A report of all transactions under this subsection shall be made to the Attorney General as in the case of other reports required of clerks of courts by this title].

[i] *(e)* In addition to the other fees required by this title, the [petitioner] *applicant* for naturalization shall, upon the filing of a petition *an application* for naturalization, deposit with and pay to the [clerk of court] *Attorney General* a sum of money sufficient to cover the expenses of subpenaing and paying the legal fees of any witnesses for whom such [petitioner] *applicant* may request a subpena, and upon the final discharge of such witnesses, they shall receive, if they demand the same [from the clerk] *from the Attorney General* the customary and usual witness fees from the moneys which the [petitioner] *applicant* shall have paid to [such clerk] *the Attorney General* for such purpose, and the residue, if any, shall be returned [by the clerk] *by the Attorney General* to the [petitioner] *applicant*.

[SEC. 345. Repealed.]

* * * * * * *

ADMISSIBILITY IN EVIDENCE OF TESTIMONY AS TO STATEMENTS VOLUNTARILY MADE TO OFFICERS OR EMPLOYEES IN THE COURSE OF THEIR OFFICIAL DUTIES

SEC. 348. [8 U.S.C. 1459] (a) In case any clerk of court shall refuse or neglect to comply with any of the provisions of section 339 [(a)] (b), or (c), such clerk of court shall forfeit and pay to the United States the sum of $25 in each and every case in which such violation or omission occurs and the amount of such forfeiture may be recovered by the United States in a civil action against such clerk.

[(b) If a clerk of court shall fail to return to the Service or properly account for any certificate of naturalization furnished by the Service as provided in subsection (d) of section 339, such clerk of court shall be liable to the United States in the sum of $50, to be

recovered in a civil action, for each and every such certificate not properly accounted for or returned.]

* * * * * * *

SEC. 404. [8 U.S.C. 1101, note] (a) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act (other than chapter 2 of title IV).

(b) There are authorized to be appropriated to an immigration emergency fund, to be established in the Treasury, $35,000,000 to be used to provide for an increase in border patrol or other enforcement activities of the Service and for reimbursement of State and localities in providing assistance as requested by the Attorney General in meeting an immigration emergency, except that no amounts may be withdrawn from such fund with respect to an emergency unless the President has determined that the immigration emergency exists and has certified such fact to the Judiciary Committees of the House of Representatives and of the Senate.

(c) Of the amounts authorized to be appropriated by section 404 to carry out this Act for a fiscal year, $1,000,000 shall be available only to carry out section 332(h) for such fiscal year.

* * * * * * *

INTERNAL REVENUE CODE OF 1986

(Public Law 99-514)

* * * * * * *

Section 3304(a) * * *

* * * * * * *

(14)(A) compensation shall not be payable on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed (including an alien who was lawfully present in the United States as a result of the application of the provisions of [section 203(a)(7) or] section 212(d)(5) of the Immigration and Nationality Act).

* * * * * * *

SOCIAL SECURITY ACT

* * * * * * *

Section 1614 (42 U.S.C. 1382)

(a)(1) For purposes of this subchapter, the term "aged, blind, or disabled individual" means an individual who—

(A) is 65 years of age or older, is blind (as determined under paragraph (2)), or is disabled (as determined under paragraph (3)), and

(B) is a resident of the United States, and is either (i) a citizen or (ii) an alien lawfully admitted for permanent residence

or otherwise permanently residing in the United States under color of law (including any alien who is lawfully present in the United States as a result of the application of the provisions of [section 203(a)(7) or] section 1182(d)(5) of Title 8).

* * * * * * *

VIRGIN ISLANDS NONIMMIGRANT ALIEN ADJUSTMENT ACT OF 1982

(Public Law 97-271)

* * * * * * *

"ADJUSTMENT OF IMMIGRATION STATUS

"SEC. 2. (a) the status of any alien described in subsection (b) may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if the alien—

* * * * * * *

"(c) * * *

* * * * * * *

"(4) For purposes of this subsection, the terms 'second preference petition', 'fourth preference petition', 'fifth preference petition', and 'immediate relative petition' mean, in the case of an alien, a petition filed under section 204(a) of the Act [section 1154(a) of this title] to grant preference status to the alien by reason of the relationship described in section 203(a)(2), 203(a)(4), 203(a)(5), or 201(b), respectively, of the Act [section 1153(a)(2) 1153(a)(4), 1153(a)(5), or 1151(b) of this title] *(as in effect before October 1, 1989) or by reason of the relationship described in section 203(a)(2)(B), 203(a)(3), or 201(b)(2)(A)(i), respectively, of such Act (as in effect on or after such date).*

* * * * * * *

TITLE 18, UNITED STATES CODE

SEC. 1429. PENALTIES FOR NEGLECT OR REFUSAL TO ANSWER SUBPENA.

Any person who has been subpenaed under the provisions of subsection (d) of section 336 of the Immigration and Nationality Act to appear at the final hearing of [a petition] *an application* for naturalization, and who shall neglect or refuse to so appear and to testify, if the power of such person to do so shall be fined not more than $5,000 or imprisoned not more than five years, or both.

XII. ADDITIONAL VIEWS OF MR. SIMPSON

I voted to favorably report S. 358 to the full Senate, but I have serious concerns over two issues raised by the committee version of the bill: (1) the fifth preference, and (2) English language ability as a criterion for admission under the "point system."

Fifth Preference

I agreed to the committee substitute amendment (which restored the fifth preference to its status in current law) in order to reach a compromise with my committee colleagues. However, I have grave concerns that this amendment sets poor immigration policy and is not in the national interest.

In the ideal world, the United States would accept every person who wished to immigrate to our country and who would not otherwise be excludable. However, it is a simple fact that demand for immigrant visas exceeds—by geometric proportions—the number of immigrants that the American public will accept. This situation requires Congress to make the tough but necessary decision of what types of immigrants we should admit. Many scholars argue that we should give priority to close family members and skilled workers. I agree with those scholars.

The fifth preference allows adult U.S. citizens to petition for their brothers and sisters (and their immediate family). In effect, we allocate 65,000 visas per year to the brothers, sisters, brothers-in-law, sisters-in-law, nieces and nephews of U.S. citizens. I believe this is not a wise use of visas when closer family members (i.e., spouses and children) and skilled immigrants or immigrants needed by our economy are waiting in line—sometimes for years—to enter our country.

I am not anti-family or anti-immigrant. S. 358 as introduced would have reserved 75 percent of all permanent visas for immigrants with a family connection here, and I have voted today for an increase in immigration levels of 21 percent over current flows. In the past I was the principal sponsor of a program that gave amnesty to over 2 million previously illegal aliens. However, generosity should not be blind or naive. We must recognize that, when immigrant visas are limited, we must distribute them wisely so that they best serve the national interest. I strongly believe that awarding family visas to more distant family members (such as those in the fifth preference) makes no sense when closer family members (such as those in the second preference) wait in line for a visa.

There has been criticism of the bill that passed the Senate last year by Asian and Hispanic groups because that bill narrowed the fifth preference. What does the restoration of the fifth preference do for these groups? It gives new applicants under the fifth preference the right to join 1.4 million other persons waiting in line for a

visa in this category. It gives new applicants the right to wait at least 22 years for a fifth preference visa. While the American public may tolerate some immigration increases, I doubt it would swallow the clearing of a 1.4 million person backlog—particularly when that backlog would inevitably emerge again, because of the tremendous demand in this category.

Even with the previous bill's narrowing of the fifth preference, Asian and Latin American immigrants would have continued to supply approximately the same number of immigrants that they supply today, i.e,, 85 percent of present legal immigration. How such a bill could be interpreted as unfavorable to Asians or Latin Americans is beyond me.

The fifth preference should be de-emphasized so that we may give proper priority to closer family members, skilled workers, and other immigrants that our labor market needs. I deeply regret that the committee bill does not recognize this principle.

English Language Ability

S. 358 expands the number of "independent immigrants" who would enter the United States either because of a job-offer from a U.S. employer or because they possess certain skills and qualities that would serve our economy and country well. The skills that would have been recognized for the 55,000 visas awarded to those aliens who are *not* employer-sponsored were: (1) age, (2) education levels, (3) English language skills, (4) occupational skills in short supply in the U.S., and (5) additional experience or training in a needed occupation.

An amendment at committee deleted English language ability from the list of skills which would be considered when admitting immigrants under the "point system." I voted against this amendment in committee, and I trust that English language ability will be reinserted on the Senate floor.

Nearly every study indicates that immigrants with English language skills contribute to our labor market more effectively and more immediately. The Department of Labor's report, "Workforce 2000," predicted that any labor shortages in the next decades will come in the skilled occupations, where English language ability, education, and computational skills will be essential. The point system attempts to address this prospect, by granting 55,000 visas to persons with the skills and qualities that our Nation is likely to need in the coming years.

While I do not believe that English language ability should be a sole or controlling factor when admitting point system immigrants, I do believe it is an important variable in determining immigrant success and performance, and that it should be considered when choosing independent immigrants.

I emphasize that, under S. 358, 91 percent of all immigrants would not benefit from knowing English, nor suffer from not knowing English. Thus, family-connection immigrants and employer-sponsored immigrants would not be included in the class of immigrants for whom English language ability is recognized. However, for the 55,000 persons under the point system who will enter with-

out a family tie or a job waiting for them, English language ability will serve them, and us as a nation, quite well.

Some have criticized this proposal as a departure from our "Nation's tradition" of not requiring an immigrant to have particular skills before he or she enters the country. However, our immigration laws moved away from this "skills-neutral" approach decades ago. For example, for years we have admitted aliens who, at the time of application for a visa, possess advanced academic degrees or who otherwise demonstrate "exceptional merit and ability." This is as it should be: we must allow visas to be granted to people who would serve our country well. English language skill is simply another skill that immigrants might possess that would serve our country well, and recognizing such skill would not be a departure from the immigration law of the past 40 years.

I understand the sympathy that many of my colleagues have for the immigration policy of 100 years ago—when most immigrants truly entered with nothing other than a burning desire to become good Americans. In response, I would refer to the advice of another American who embodies the essence of our Nation, Abraham Lincoln: "As our case is new, so we must think anew and act anew. We must disenthrall ourselves. . ."

The case is new, today. We are no longer a Nation of unsettled frontiers, but an industrialized Nation that is facing strong challenges to provide large numbers of workers who can perform in an increasingly services-based economy. We must disenthrall ourselves—and allow English language skills to be considered when we admit the 9 percent of our immigrants who enter without family or U.S.-employer connections.

ALAN K. SIMPSON.

XIII. MINORITY VIEWS OF MESSRS. HATCH AND DECONCINI

The compromise embodied in the substitute to S. 358 adopted by the committee contains a number of positive features. We are pleased that the current language for the fifth preference, for brothers and sisters of U.S. citizens, has been retained. The original S. 358 would have limited this category to never married brothers and sisters. We believe the creation of the new seed/independent immigration category under a point system is a worthy provision. The bill approved by the committee deletes points for English language ability in this new category under the point system. We supported this deletion. We believe that people should learn the English language once they arrive in the United States and before they are granted the privilege of American citizenship. We do not believe, however, that English speaking ability should provide an independent advantage to any person seeking to come to this land of opportunity from around the world.

We believe, however, that important concerns remain to be addressed.

S. 358 Is a Serious Threat to the Family Preference System

Under current law there is no cap on the number of immediate relatives of U.S. citizens who can immigrate to the United States each year. "Immediate relatives of U.S. citizens" are their minor children, spouses, and parents of citizens over 21. In addition, 216,000 visas are allotted to other family connected immigrants in the following preference categories:

Unmarried adult sons and daughters of U.S. citizens;

Spouses, unmarried sons and daughters of permanent resident aliens;[1]

Married sons and daughters of U.S. citizens;

Brothers and sisters of adult U.S. citizens.

Moreover, the visas allocated to these four family connection preferences are not offset by the number of immediate relative immigrants.

Under the committee bill, the number of family connection preference visas will equal 480,000 minus the number of immediate family relatives who enter the country.[2] These immediate relatives remain able to enter the country without numerical limitation under the committee bill, as provided in current law.

---

[1] The committee bill limits the preference for unmarried sons and daughters to those who have petitioned for a visa before the age of 26.

[2] The committee bill also provides that unused visas in the independent immigrant category will be added to the number of family connection preference visas. It is uncertain, however, if not unlikely, that this provision will result in any such addition. The sponsors of the bill appear to assume that there will be no such unused visas.

Accordingly, as the number of immediate family relative immigrants increases, the opportunity for family reunification under the family connection preference categories is reduced. Indeed, immigration of immediate relatives is expected to grow during the next decade. The General Accounting Office estimated on April 4, 1989, that under S. 358 as originally introduced, family preference immigration during 1990 to 1999 would drop from 2,160,000 under current law to 1,213,133—a drop of nearly 1 million.

Moreover, the GAO also testified on March 3, 1989, about S. 358 as originally introduced. GAO said that, as a result of the offset of the immediate relatives against the family preference immigration categories, "family preference immigration could drop to zero" by 1998-99.

We understand that the committee bill provides a somewhat larger number of visas available for family connection preference immigrants than S. 358, as introduced. Thus, GAO's estimates would need some adjustment. But even under the committee bill, the future availability of the family preference categories is in doubt because of expected growth in the immediate family relative category.

We realize the committee bill contains an expedited mechanism for increasing the level of legal immigration, starting in 1994, but there is no guarantee of any such increase. In that year, and every 3 years thereafter, the President may recommend an increase—or decrease—in the family connection preference figure. If the increase or decrease is 5 percent or less, it goes into effect unless Congress disapproves it. A recommendation of an increase—or decrease—of more than 5 percent must be approved by Congress before it becomes effective. Thus, there is no guarantee of any increase in the future, if the visas available to the four family connection preferences are reduced because of the offset of immediate family relatives.

In our view, immigration reform should permit at least modest increases in family preference immigration. These long-standing categories permit family reunification. Current law permits 216,000 immigrants in these preferences. We understand the committee bill will result in an initial increase to 260,000.[3] But as the number of immediate family relatives increases, the number of visas available to those in the four family connection preferences categories decreases. Thus, the offset could undermine not only the increase of 44,000 in the family connection preferences, but actually reduce the visas available to below the number available under current law, and eventually eliminate the family preference system altogether. This would work a profound change in our immigration system. Thus, while the committee bill on its face will cause a modest, initial increase in family connection preference immigration, it contains the seeds of its serious decline or virtual elimination.

We believe legal immigration reform legislation should retain the current law's commitment to family reunification. The family

[3] This figure, provided by the members of the Immigration Subcommittee, is derived by offsetting the appoximately 220,000 immediate family relatives who entered the country in the preceding year, against the 480,000 figure.

reunification system reflects traditional American values. We believe the offset of immediate family immigration against family connection preference immigration is undesirable. We should not pit immediate family immigration against family connection preference immigration.

At a minimum, Congress should assure that the visas available to family connection preference immigrants do not fall below the number available under current law, 216,000. This can be achieved by a compromise approach. Under such an approach, both the cap on family connection preference immigration and the offset of immediate family relatives could be retained. The number of family connection preference visas, however, would be guaranteed never to drop below 216,000 in any year. Only by providing such a floor for family connection preference immigration, which merely reflects the number of visas available today, will we be certain to preserve fully the integrity of the family preference system.

ORRIN G. HATCH.
DENNIS DECONCINI.

○